

April 24, 2007



**TRANSCRIPT**  
**April 24, 2007**

**MONTGOMERY COUNTY COUNCIL**

Councilmember Marilyn Praisner, President	Councilmember Michael Knapp, Vice-President
Councilmember Phil Andrews	Councilmember Roger Berliner
Councilmember Marc Elrich	Councilmember Valerie Ervin
Councilmember Nancy Floreen	Councilmember George Leventhal
Councilmember Duchy Trachtenberg	



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1 Council President Praisner,

2 Good morning, ladies and gentlemen. Welcome to the Tuesday, April 24th meeting of  
3 the Montgomery County Council. Can we please rise for a moment of silence? Thank  
4 you. Thank you. We were having a fascinating conversation before the Council meeting  
5 started on this whole issue that will be the focus of a presentation and proclamation by  
6 Councilmember Floreen in recognition of Equal Pay Day, and I know there are some  
7 folks here to join her, so Nancy. Thank you Madame President.

8  
9 Councilmember Floreen,

10 --and Susan Horst. Pardon me. Yes. Yes. Yes. It was brought to our attention that this  
11 was an important day, and we Councilwomen here are particularly appreciative of this  
12 as well as everybody else, but it seemed very appropriate to celebrate or really decry,  
13 the current status and continuing status of women in the work place. So we have a  
14 proclamation that spells out some of the facts, and then I'm going to let these experts  
15 here speak to the subject. Whereas 40 days after the passage of the Equal Pay Act and  
16 Title 7 of the Civil Rights Act, women continue to experience the consequences of  
17 inequitable pay differentials. And whereas year round, full-time working women in 2005  
18 earned only 77% of the earnings of year round full-time working men. And whereas  
19 women managers in seven of ten industries surveyed, actually lost ground in closing the  
20 wage gap between 1995 and 2000. And whereas women earned less in every  
21 occupational classification for which an update is available including occupations  
22 dominated by women. And whereas, over a working lifetime, this wage disparity cost the  
23 average American woman and her family an estimated \$523,000 in lost wages  
24 impacting Social Security benefits and pensions. And whereas, in Montgomery County  
25 over the past decade, women have represented nearly half of the labor force. And  
26 whereas their pay strengthens the security of families today and eases future retirement  
27 costs while enhancing the American economy. And whereas April 24th symbolizes the  
28 day on which the wages paid to American women catch up to the wages paid to men.  
29 And now therefore be it resolved that the Montgomery County Council designates April  
30 24th, 2007 as Equal Pay Day and calls upon government officials, business and  
31 industry leaders and all people of Montgomery County to recognize the full value of  
32 women's skills and significant contributions to the labor force and further encourages  
33 businesses to conduct internal pay evaluations to ensure women are paid fairly.  
34 Presented on this 24th day of April in the year 2007. Signed by Marilyn Praisner, our  
35 Council President.

36  
37 Councilmember Floreen,

38 Thank you very much.

39  
40 Council President Praisner,

41 Thank you. You're welcome. Thank you.

42  
43 Councilmember Floreen,



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1 Let me just say, Denis here, Denis Stoutamire is President of the Montgomery County  
2 Business and Professional Women, really the group that brought this to our attention.  
3 Susan Horst here is Vice President of the Business and Professional Women Maryland,  
4 and Pat Cornish here is our own Chair of the Status of Women in Montgomery County  
5 within the Commission on Women as well as serving many of the leadership roles in  
6 that community. So do you want to say a little bit about the events scheduled to  
7 celebrate this great day in 2007.

8  
9 Denis Stoutamire,  
10 I'll defer to Pat for that.

11  
12 Pat Cornish,  
13 Thank you. Thank you. This is indeed an honor. Thank you so much. We're going to be  
14 heading from here down to Capital Hill. There's a rally at 1:30 and Senator Clinton and  
15 Senator Tom Harkin are going to be talking about the introduction of the Fair Pay Bill in  
16 the national level. So, we're pretty excited about that. Our local organization will be  
17 celebrating tonight with an unhappy hour. We invite you all to come. It will be at the  
18 McGinty's Public House on Elsworth Drive in Silver Spring from 5:00 to 8:00. There will  
19 be some good music, dancing, and a drawing for 77 cent drinks for women periodically  
20 off and on throughout the evening. You know, this pay inequity is still a huge issue even  
21 though it keeps getting pushed further and further back. It is a big issue in this country  
22 and it is being addressed on many levels, the federal level and the state level. Our state  
23 level has just had a report by an Equal Pay Commission and they said that Maryland  
24 does have a problem, and it needs to be looked into further so we will continue our  
25 advocacy on this subject, and we thank you so much for recognizing this as an  
26 important day.

27  
28 Councilmember Floreen,  
29 Well thank you and we appreciate your leadership. Susan, would you like to say  
30 anything?

31  
32 Susan Horst,  
33 No. Montgomery County has been a great leader in the state in this regard, and I'm just  
34 pleased to be a member of Montgomery County and pleased to be a member of  
35 Business and Professional Women who really spearheaded this issue across the  
36 country.

37  
38 Councilmember Floreen,  
39 Well, thank you for your hard work on women's behalf everywhere, and let's hope we  
40 can move this date back in future years.

41  
42 Pat Cornish,  
43 Thank you very much.



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1 Susan Horst,  
2 (applause multiple voices laughter) Thank you.

3  
4 Council President Praisner,  
5 Thank you. We will now move to general business, announcements, agenda and  
6 calendar changes. Linda Lauer.

7  
8 Linda Lauer,  
9 One calendar change that we have today is PHED will start at 2:30 instead of 2:00.  
10 That's the only change. We did have a number of petitions this week supporting, we had  
11 one supporting funds for the Gaithersburg Up County Senior Center, a petition  
12 supporting funds for rebuilding together, supporting, another one supporting full funding  
13 for the library's budget, two petitions supporting full funding of the school budget and  
14 one petition supporting full funding of the Esau Mets Program. Thank you.

15  
16 Council President Praisner,  
17 Okay. I believe we have some Minutes, Madame Clerk.

18  
19 Crystal Brockington  
20 Yes, the minutes of April 9th and 10th as well as the Closed Session Minutes of  
21 February 27th.

22  
23 Council President Praisner,  
24 Is there a motion?

25  
26 Councilmember Floreen,  
27 So moved.

28  
29 Councilmember Knapp,  
30 Second.

31  
32 Council President Praisner,  
33 Councilmember Floreen moves approval. Vice-President Knapp seconded the motion.  
34 All in favor approval of the Minutes? That is unanimous. We now move to the Consent  
35 Calendar. Council Vice President Knapp moves approval or adoption of the Consent  
36 Calendar. Councilmember Trachtenberg seconds. Are there any items that  
37 Councilmembers would like to either remove from the agenda or comment on?  
38 Councilmember Elrich? I'm sorry.

39  
40 Councilmember Elrich,  
41 I just want to make a quick comment on the Non-Competitive Awards list.

42  
43 Council President Praisner,  
44 Uh-huh.



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Councilmember Elrich

I hope that in the future, we get a lot more information about the Non-Competitive Awards and I mean, I continue to be struck by the breadth of groups that get money, the lack of clear designation about what makes one group or one program different than another and whether there's any evaluation of whether, if these in fact are extensions, if their purposes are extensions of the County mission, whether this is the best way to extend the County mission. It seems to be being done without the kind of evaluation that I think ought to be done. I think it would be helpful, especially with four new Councilmembers at some point, that we discuss, first of all, the definition of non-competitive and also why we're having amendments. This is an amendment to existing contracts. And it is a part of the Council, County, I should say, additional support to the developmentally disabled. There are numerous organizations that receive this support, and this one is additional funding based on personnel, based on clients, I assume. Essie, do you want to make any comments, and then perhaps we can prepare something for the full Council in writing after this discussion?

Essie McGuire,

Sure. I'd be happy to do that, and you're right Councilmember Elrich, that the list encompasses a wide variety of purposes of types of contracts. Some of the contracts do extend back historically and relate more directly to the core mission of the department, and I think as Ms. Praisner was saying, this is one example of that kind of supplement that's more related to the core mission of the department. In fact, the MFP Committee did discuss a potential venue to deal with these kinds of contracts separately because although they are technically non-competitive, the County does provide the funds to all the providers who provide this type of services in the County. So it's a little different than some of the other contracts. And this amendment does make a technical adjustment to their previous allocation that the Council approved in FY07 based on, as Ms. Praisner said, client visits for the year and client reconciliation. As far as the rest of the list, it does encompass the range of non-competitive grants and contracts awarded by both the Council and the Executive as well as other programs that the department may initiate, the Executive or the Council, and again some of them extend back many years, some of them are more recent.

Council President Praisner,

Councilmember Berliner, or Marc, I'm sorry. Did you have more?

Councilmember Elrich,

I was just going to say, I don't have any, and I cannot get a sense from this. How they fit together. I can't get a sense.

Essie McGuire,

Right.



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1 Councilmember Elrich,

2 I mean, we're going to be looking at a bunch of grants coming on our side, and I can't  
3 get a sense of this, how this dovetails with what's coming over to us. So this seems to  
4 be just difficult to sort through.

5  
6 Essie McGuire,

7 I'm sorry. I should clarify on a technical level, this really is a procurement vehicle that  
8 authorizes the County to enter into these contracts. It's not a policy document and to  
9 that extent the contracts don't have much relationship to each other. Again, it's a  
10 procurement vehicle and it is authorized in the procurement section of the code, and as  
11 a technical matter the Chief Administrative Officer for the County does review the  
12 contracts and authorize that they are in the public interest, and the Council concurs with  
13 that assessment by approving it as part of the appropriation resolution.

14  
15 Councilmember Elrich,

16 And these all have performance measures and evaluations to go --?

17  
18 Essie McGuire,

19 They all go through the contract monitoring process in place in the different departments  
20 which means that they have a contract manager and associated performance  
21 monitoring outcomes.

22  
23 Councilmember Elrich,

24 So if I asked for them, I can get outcomes for all these?

25  
26 Essie McGuire,

27 You could get the information that the contract monitors have on, as they monitor those  
28 contracts. I wouldn't necessarily speak to what specifically you would get from them, but  
29 they each do have a contract monitor and the contract monitor is responsible for  
30 verifying the terms of the contract and evaluating certain aspects of the outcomes that  
31 would be within the contract.

32  
33 Councilmember Elrich,

34 If you could convey to the other side of the street that I would like to see whatever  
35 performance measures they have and evaluations for all of these, I would be very  
36 happy.

37  
38 Council President Praisner,

39 It would probably be helpful. There are two things. One the information that I've asked  
40 you to provide to prepare--.

41  
42 Essie McGuire,

43 Yes.



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1 Council President Praisner,

2 Secondly, I think we need to continue to look more rigorously at the terms we use in  
3 making allocations of money. Grants are contracts as well, but we use the word grant,  
4 and it's a frustration of mine, and I think others that the nomenclature may not be helpful  
5 for this.

6  
7 Essie McGuire

8 That's true.

9  
10 Council President Praisner,

11 It also, I think and Councilmember Leventhal's light is on as well, he probably will want  
12 to comment too, but a little history on what used to be the structure for the  
13 developmentally disabled funding which included our funding the state.

14  
15 Essie McGuire,

16 Yes.

17  
18 Council President Praisner,

19 Where the state then, as I recall, was able to leverage federal dollars in order to do so,  
20 and back in the Glendening administration, the state stopped doing that, therefore, the  
21 organizations that got the benefit of the federal dollars coming back to them here in  
22 Montgomery County, that served developmentally disabled as I recall found themselves  
23 with fewer dollars.

24  
25 Essie McGuire,

26 Correct.

27  
28 Council President Praisner,

29 And so the County created this structure of on an ongoing basis providing supplemental  
30 funding from the County to support those clients, and it was always going to be rolling  
31 numbers.

32  
33 Essie McGuire,

34 Correct.

35  
36 Council President Praisner,

37 Depending upon the clients that they serve, as I recall.

38  
39 Essie McGuire,

40 Just to add to that, I would like to clarify also that again, the funds for this particular  
41 amendment are formula driven, and so in that respect, the Council decides the total  
42 amount of the appropriation for the coming year and again, this will be within that FY07  
43 appropriation, and then that appropriation is based on the number of clients, and then  
44 the client totals can fluctuate throughout the year which is actually the way it was





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1 designed so the clients could go to whatever providers they chose as their first choice.  
2 And so the amendments that we have to do again for these kinds of providers, the –  
3 providers.

4  
5 Council President Praisner,  
6 The individual allocations.

7  
8 Essie McGuire,  
9 Reflect the individual allocations only and do not reflect the total, any changes to the  
10 total appropriation for this purpose.

11  
12 Council President Praisner,  
13 That's why I think we may want to look at the vocabulary. Councilmember Leventhal.

14  
15 Councilmember Leventhal,  
16 Well, I appreciate Councilmember Elrich's interest in this issue, the MFP and HHS  
17 Committees on the last Council spent a lot of time looking at what we colloquially refer  
18 to as the iceberg as opposed to the tip of the iceberg which are the few million in grants  
19 that we award at the end of the budget process. A couple of days ago in the HHS  
20 Committee, I think I have these numbers right Essie, if you know them off the top of  
21 your head, you can correct me, but we've got, the Department of HHS total budget is  
22 about 256 million from all revenue sources of which between 70 and 80 million are  
23 contracts with outside NGAs, and so it's fairly routine, have I got those numbers about  
24 right?

25  
26 Essie McGuire,  
27 That's correct. I was just about to clarify that a great deal of that dollar amount is  
28 actually competitive. That's not the non-competitive total.

29  
30 Essie McGuire,  
31 Right.

32  
33 Councilmember Leventhal,  
34 I just said contracts with outside NGAs.

35  
36 Essie McGuire,  
37 I just wanted to clarify it in this context.

38  
39 Councilmember Leventhal,  
40 Okay. In the case of these that are before us today -- so 70 million dollars worth of  
41 contracts you're talking about hundreds and hundreds of entities. We asked OLO to give  
42 us sort of an overview of the process for awarding grants, I think two years ago and that  
43 document is, would be a good starting place to read, to get a handle on how these  
44 things work. In terms of reviewing the performance reports on all, you know, 700 or 800





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1     awardees. That would be a long assignment. I mean, we have asked persistently for as  
2     much information and will continue to do so, just getting the list of all the contracts in  
3     and of itself was difficult. We can make the request for all of the performance reviews. It  
4     would be a significant exercise in paper production, and I would have to question, you  
5     know you'd have to think long and hard about whether any of us were actually able to sit  
6     down and read them all, just the volume of them. So, I've come to the conclusion too, I  
7     had the same questions not long ago, and we've consistently emphasized in the HHS  
8     Committee the need to make these competitive at every appropriate juncture. In this  
9     case, existing contracts were renegotiated because of an inflation adjustment and some  
10    negotiation between the provider and the County government, so these aren't new Non-  
11    Competitive Awards, they're an adjustment to a prior award which had originally been  
12    awarded as a result of a competitive bid.

13  
14    Council President Praisner,  
15    Okay. Councilmember Berliner.

16  
17    Councilmember Berliner,  
18    Thank you, Madame President. I just wanted to observe that item A relates to an issue  
19    that has been sort of a hot button issue for a lot of folks. The question of free parking at  
20    public libraries including the library in Bethesda. It is one that the last Council under my  
21    colleague's leadership, Councilman Andrews decided that there should be free parking,  
22    and I believe that the experience, at least in Bethesda, has been that as a result of that,  
23    it has become a great spot for folks who want free parking regardless of whether they  
24    go to the library or not. In fact, library patrons are having difficulty getting into the library  
25    because it has become so popular as a great place to park including those who work at  
26    the library. The proposal, the supplemental appropriation that has been introduced  
27    today is, as I appreciate it, is designed to find a middle ground in light of the resolution  
28    the previous Council adopted with respect to this matter and one that would allow  
29    patrons to go to a kiosk, patrons of the library to go to a kiosk and get free parking while  
30    those who do not go to the library would pay at a meter. I look forward to the public  
31    hearing with respect to this matter to determine whether that middle ground is in fact the  
32    ideal solution or simply a solution in light of the constraints, if you will, imposed by the  
33    last Council and will be among those wanting to revisit the question as to whether or not  
34    this is the best approach. So I just wanted to share with my colleagues that this is not a  
35    minor matter in certain quarters. So, thank you.

36  
37    Council President Praisner,  
38    Thank you. I would also comment that the action by the previous Council was not  
39    unanimous either. We have the Consent Calendar in front of us. All in favor of approval?  
40    It is unanimous. Thank you all very much. We will now move to legislative session. I  
41    believe there's no Legislative Journal, so we will move to Introduction of Bills, Tenant  
42    Displacement, Sale of Rental Housing, Right of First Refusal sponsored by the Council  
43    President on her own behalf as well as at the request of the County Executive. I also



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1 believe there are a couple of other Councilmembers who have indicated an interest in  
2 sponsoring this legislation. Is that true?

3  
4 Unidentified

5 Put me on as a cosponsor.

6  
7 Kathleen Boucher,

8 Yes, that's correct. Yes, that's correct. In fact, more than an interest. I think  
9 Councilmembers Floreen and Knapp initiated this request.

10  
11 Council President Praisner,

12 And Elrich.

13  
14 Kathleen Boucher,

15 And Councilmember Elrich would also like to be added as well.

16  
17 Council President Praisner,

18 Okay. So if you could make those modifications.

19  
20 Kathleen Boucher,

21 If I could just very quickly say, there's one error in the paragraph on your memo, second  
22 paragraph, it refers to rental housing built before February 5th, 1981. That should be  
23 after.

24  
25 Council President Praisner,

26 Pardon me?

27  
28 Kathleen Boucher,

29 An error in the Council staff packet, on the second paragraph, it refers to, it says that  
30 the Bill refers to owners of rental housing built before February 5th, 1981. That should  
31 be after.

32  
33 Council President Praisner,

34 Okay. So the legislation relates to owners of rental housing built after February 1st,  
35 1981 and would repeal the provision exempting them from the Right of First Refusal  
36 requirement set out in County code which requires the owner of rental housing  
37 consisting of at least four units to get the County, the Housing Opportunities  
38 Commission, and any tenant organizations the right to buy the rental housing before it is  
39 sold to another person.

40  
41 Kathleen Boucher,

42 That's right.

43  
44 Council President Praisner,



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1 Okay. That legislation is introduced, and the public hearing is scheduled for June 12th  
2 at 1:30 p.m. Councilmember Leventhal.

3  
4 Councilmember Leventhal,  
5 I'd like to be added as a cosponsor as well, and of course it exempts rental housing  
6 constructed before 1981.

7  
8 Council President Praisner,  
9 Right. Councilmember Knapp? Oh I'm sorry. Councilmember Andrews.

10  
11 Councilmember Andrews,  
12 Thank you. I'd like to be added as a cosponsor as well. One of the most important  
13 things we can do to preserve affordable housing is to preserve what's already there, and  
14 we need to do everything possible to do that. We are continuing to lose ground in this  
15 area because of the conversions from what is affordable, whether it was explicitly  
16 designed that way or whether it happens to be because of its age or size, and we need  
17 to use every opportunity to preserve the affordable housing stock since it is frankly more  
18 efficient to do that than it is to try to add a percentage of affordable housing as a percent  
19 of market rate units. So please add me as a cosponsor.

20  
21 Council President Praisner,  
22 Thank you. Councilmember Trachtenberg.

23  
24 Councilmember Trachtenberg,  
25 Actually, I just--.

26  
27 Council President Praisner,  
28 Mic.

29  
30 Councilmember Trachtenberg,  
31 Simply want to ask that my name be added to the legislation as well. Obviously, I see  
32 this, and I know my colleagues do as well, as a priority that needs to be addressed in  
33 the short term.

34  
35 Council President Praisner,  
36 Okay. Councilmember Berliner.

37  
38 Councilmember Berliner,  
39 If I could be added as a cosponsor as well, I would appreciate it.

40  
41 Council President Praisner,  
42 No, we're still going to have a public hearing. (laughter multiple voices) We may skip the  
43 PHED Committee meeting, but we won't skip the public hearing. Okay. We will now  
44 return to bills for final reading, and consistent with the focus on housing issues, we have



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1 before us Expedited Bill 1-07 Condominiums Conversion of Rental Housing, Extended  
2 Tenancies. The PHED Committee recommends approval with amendments. In  
3 essence, this bill clarifies that individuals with mental or emotional disabilities in addition  
4 to those with physical disabilities are eligible for a life tenancy if they meet the County's  
5 income and length of residency criteria. The bill also dealt with the issue of how one  
6 calculates the income levels. And that's where there appeared to be or were differences  
7 of opinion within County agencies as well as a need to clarify the issue of which, what  
8 would be the impacts of the individual residents depending upon the income levels that  
9 we chose. The Committee had three options in front of us. Law had recommended, the  
10 amendment had recommended using HUD income level limits based on  
11 recommendations that had come from the Department of Housing and Community  
12 Affairs. We then heard that the HHS Department had some concerns about that  
13 because of what they believed would be negative impacts on individuals. I should note  
14 that there is a limit to the number, the households. There's a 20% cap as far as the  
15 number of units. So no matter what order there may be, one might exceed that cap  
16 depending upon the number of units in the building and the criteria of the individuals  
17 who happen to be residents in the building. Going back, the first option would be the low  
18 income limits used by HUD. Option two was 80% of the median income of the  
19 Washington area, statistical area. And option 3 was 80% of the median income in the  
20 County. As you'll see on pages 2 and 3 of the packet, the assessments varied as to the  
21 types of households, meaning not only the income level but also the number of  
22 occupants in that household and how that might affect them. Committee had significant  
23 conversation, as I said, about this issue, and the Committee recommends option 2, I  
24 believe, and in the process of doing so, indicated that we will continue and we want the  
25 Department of Housing and Community Affairs to continue to monitor this issue for us.  
26 We really had no statistical information in front of us of what the impact has been in the  
27 past or what material we may have about specific tenancies. So it's hard to know what  
28 the effects will be at this point. We can always introduce legislation to make these  
29 modifications in the future should we find that the threshold levels are causing some  
30 concern. But remember that that 20% cap may also have an effect and that is, I think,  
31 state legislation, not anything that the Council can change. We could always look at  
32 whether we wanted to work with the legislature on modifications as well, but at this point  
33 absent data and given the review and the input, our best recommendation is to go with  
34 option 2, the Washington area statistic and income calculations. So the Committee  
35 recommends approval with those notations, and I see no lights, so Madame Clerk. Oh  
36 I'm sorry. Roger?

37  
38 Councilmember Berliner,

39 I wanted to observe that I believe this was an area that my predecessor Mr. Denis had  
40 been very involved in and it was something that I admired about his efforts on the  
41 Council and believe that this is a logical extension of that work and fully support it.

42  
43 Council President Praisner,

44 Thank you. Madame Clerk, if you'll call the roll.



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1  
2 Council Clerk,  
3 Ms. Ervin.  
4  
5 Councilmember Ervin,  
6 Yes.  
7  
8 Council Clerk,  
9 Mr. Elrich.  
10  
11 Councilmember Elrich,  
12 Yes.  
13  
14 Council Clerk,  
15 Ms. Floreen.  
16  
17 Councilmember Floreen,  
18 Yes.  
19  
20 Council Clerk,  
21 Ms. Trachtenberg.  
22  
23 Councilmember Trachtenberg,  
24 Yes.  
25  
26 Council Clerk,  
27 Mr. Andrews.  
28  
29 Councilmember Andrews,  
30 Yes.  
31  
32 Council Clerk,  
33 Mr. Berliner.  
34  
35 Councilmember Berliner,  
36 Yes.  
37  
38 Council Clerk,  
39 Mr. Knapp.  
40  
41 Councilmember Knapp,  
42 Yes.  
43  
44 Council Clerk,



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1 Ms. Praisner.

2  
3 Council President Praisner,

4 Yes. It passes 8-0. Councilmember Leventhal is temporarily absent. When he gets back  
5 we'll ask him if he'd like to be recorded Madame Clerk. Okay. Thank you all very much.  
6 We will now move to District Council Session. We're just about eight minutes ahead of  
7 schedule, but I believe the Hearing Examiner is here and I see individuals who I believe  
8 are interested in this issue, so we should be able to proceed. This is Development Plan  
9 Amendment DPA 06-1 and comes to us from the Hearing Examiner with  
10 recommendations of approval from the Planning Staff, Planning Board and Hearing  
11 Examiner. Mr. Hearing Examiner, are there any comments you would like to make?  
12

13 Marty Grossman,

14 Good morning Madame President. Yes, just a few. This is an application to amend a  
15 Development Plan that was approved by the Council on March 30, 2004 in LMAG808.  
16 And the property involved is located at the corner of Battery Lane and Woodmont  
17 Avenue in the Woodmont Triangle area of Bethesda. The Council had rezoned the  
18 property to the PD75 zone in G808 and approved the Development Plan which called  
19 for ten town homes and one remaining existing single family detached home. The  
20 present plan would call for an eight-story condominium with forty-six units and mixed  
21 use condominium with eight MPDUs and a ground level restaurant. The existing single  
22 family home would remain the office building. The three or four story office building that  
23 exists at the south end would be removed as it would have been with the old plan.  
24 There were three issues that came up in the context of this Development Plan  
25 Amendment application. The first raised by Mr. Humphrey of the Montgomery County  
26 Civic Federation was whether or not the bonus height and density was justified. Mr.  
27 Humphrey took the position that the 65 foot limit specified in the sector plan for this area  
28 should be enforced and should be something that people could rely upon. The Planning  
29 Board as well as myself felt that the Woodmont Triangle amendment made very clear  
30 that if you include onsite MPDUs then added density and height would be available.  
31 This application went through the required process of review by the Alternative Review  
32 Committee and the Planning Board recommended that the added height and density  
33 should be allowed. I find that's appropriate, and in this case, I think that the project that's  
34 being suggested here would be more compatible with the existing and planned  
35 development in the area and more consistent with the now in effect Woodmont Triangle  
36 amendment to the sector plan. The second issue was whether or not the Alternative  
37 Review Committee process was fatally flawed, an objection raised by the People's  
38 Counsel. I found that it was flawed but not fatally. That there was a problem in that the  
39 open meeting provisions of the state law were not followed however not only had the  
40 objection been waived by being untimely and by failing to pursue the administrative  
41 remedies that had been available, but also that there was no harm in this case in which  
42 there was so much public hearing availability to the public including the Planning Board  
43 session and the Hearing Examiner's public hearing at which contrary evidence  
44 regarding financial feasibility, that which is considered at the ARC Committee level





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1 could be considered. So I felt that there was no undue prejudice here from the failure to  
2 follow the open meetings law. And the third issue was whether or not the detached  
3 single family home that exists there should be permitted to remain, an issue once again  
4 raised by Mr. Humphrey. I felt that that issue had been resolved by the Council's  
5 resolution in G808 which said it was a nonconforming use and so it should be allowed to  
6 remain. And with that, I recommend approval of this Development Plan Amendment,  
7 and we'll answer any questions that the Council may have.

8  
9 Council President Praisner,  
10 Mr. Leventhal is your light on on this issue or the legislation we just passed? Okay.  
11 Alright.

12  
13 Councilmember Leventhal,  
14 First of all, I'm sorry I was making a phone call. I didn't realize the matter would be  
15 disposed of so quickly. Could I please be recorded in favor of the Bill, Expedited Bill 1-  
16 07. Secondly, okay. On circle 68 of your report, Mr. Grossman, second paragraph, it  
17 says that the People's Counsel and a representative of the Civic Federation had been  
18 given access to applicants' confidential financial documents. May I assume that that  
19 was with the consent of the applicant?

20  
21 Marty Grossman,  
22 Yes, that was after Mr. Carver raised the objection. We had a second hearing and in  
23 between those two hearings, or at some point in the three hearing process, three days  
24 of hearing, they were given access by the petitioner.

25  
26 Councilmember Leventhal,  
27 With the permission of the applicant? Okay.

28  
29 Marty Grossman,  
30 Yeah.

31  
32 Councilmember Leventhal,  
33 And then it goes on to say that the Civic Federation's representative withdrew any  
34 objection based on this issue. Was that any objection to the overall application or just on  
35 the matter of the applicant's financial standing.

36  
37 Marty Grossman,  
38 Just on the question of the financial standing.  
39 The financial considerations by the Alternative Review Committee.

40  
41 Councilmember Leventhal  
42 Okay. Madame President, I'd like to move approval of the Hearing Examiner's report.

43  
44 Council President Praisner,





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1 Okay. Is there a second.

2  
3 Councilmember Ervin,  
4 Second.

5  
6 Council President Praisner,  
7 Alright. Been moved by Councilmember Leventhal and seconded by Councilmember  
8 Ervin. We still have a few lights. Councilmember Berliner.

9  
10 Councilmember Berliner,  
11 I appreciate the report, and I also appreciate your efforts to ensure that there was in fact  
12 a public hearing. As I read the document and your report that initially because there was  
13 no opposition before the Planning Board, and the Planning Board, as others have  
14 noted, unanimously voted in favor of this, the recommendation from staff was that there  
15 should not be a public hearing with respect to this matter, and as I appreciate the  
16 document in front of us, you felt that given how substantially the project had changed  
17 that that argued in favor of a public hearing just to make sure that the opposition with  
18 respect to this was, everybody was on notice with respect to this. Is that a fair  
19 characterization?

20  
21 Marty Grossman,  
22 Yes, but also to give this body the opportunity to fax you a predicate upon which to  
23 make the findings required to approve the Development Plan Amendment.

24  
25 Councilmember Berliner,  
26 I also, as I read your report, believe it's fair to say that you've concluded and the facts  
27 supported the notion that there would not be any significant adverse traffic impacts as a  
28 result of this; is that also true?

29  
30 Marty Grossman,  
31 That's correct.

32  
33 Councilmember Berliner,  
34 And is it also true that you concluded that the school systems around that area would  
35 not be adversely affected as a function of this development?

36  
37 Marty Grossman,  
38 That's correct. Based on a letter from Mr. Chris Bell and public schools.

39  
40 Councilmember Berliner,  
41 And as you observed that the existing zoning ordinance expressly recognizes that one  
42 can exceed the height limitation for the purpose that is proposed here which is  
43 moderately priced dwelling units; is that correct?



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1 Marty Grossman,  
2 Right. Both the zoning ordinance and the Woodmont Triangle amendment passed in  
3 2006 to the sector plan recognize that. Yes.

4  
5 Councilmember Berliner,  
6 And your conclusion is that in that context as well as the surrounding area itself that this  
7 use actually fits quite nicely with the surrounding area as it exists today and as is  
8 proposed to be developed?

9  
10 Marty Grossman,  
11 Yes. Because since this rezoning was approved in 2004, some additional plans have  
12 been - have come to light. There is now a plan for a building immediately to the east  
13 across Woodmont Avenue from this proposed site which will be approximately 100 feet  
14 tall. There is now in the Woodmont Triangle amendment approval of heights to the  
15 south of this building which would be in the 100 - 110 foot area. So yes, I think that it  
16 would actually fit better into what is now planned than the previous approval.

17  
18 Councilmember Berliner,  
19 If you could, share with me the ARC finding, and that finding as I appreciate it is that we  
20 could not have the moderately priced dwelling units in the absence of the increase in  
21 density. Is that a fair characterization?

22  
23 Marty Grossman,  
24 Well, what the ARC reviews is whether or not it is financially feasible to have the  
25 MPDUs without the additional height and density, and their finding is that it's not  
26 financially feasible to do so, although, I mean, -- .

27  
28 Council President Praisner,  
29 Isn't that an onsite issue though?

30  
31 Marty Grossman,  
32 Right, when you say onsite issue, it's an issue as to at this particular location.

33  
34 Unidentified  
35 At this particular location.

36  
37 Council President Praisner,  
38 Right.

39  
40 Marty Grossman,  
41 Yes. I mean, the ARC considers financial documentation from the applicant, and then  
42 has an evaluation by an expert of that documentation. There is some question as to  
43 whether or not, in my mind at least, as to whether or not that kind of individual financial  
44 documentation is necessary. I mean, one could argue that an objective analysis of a site



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1 as to whether or not a project is feasible at that site would not require that kind of  
2 information, but in any event, that's the process that is used now by the ARC. The ARC  
3 then makes a recommendation to the Planning Board. The Planning Board then reviews  
4 it and pursuant to the zoning ordinance makes a decision as to what to recommend. And  
5 in this case, recommended the additional height and density.

6  
7 Councilmember Berliner,

8 And was there any debate in the hearing itself as to the validity of the findings as  
9 opposed to the legal process, the legal sets of issues that you discussed?

10  
11 Marty Grossman,

12 Right. There was not because there was no evidence presented to challenge the  
13 findings of the ARC in this case. It would be an issue that somebody could raise at the  
14 hearing. It's certainly an issue that could be raised by anybody who wanted to raise that  
15 kind of an issue, but no such issue was raised.

16  
17 Councilmember Berliner,

18 So both People's Counsel and other parties who were involved had the opportunity, had  
19 they concluded that the financial data was somewhat suspect, could have raised that  
20 issue with you and actually reviewed the material and then did not present any evidence  
21 or any cross-examination of witnesses that would lead to any question with respect to  
22 the validity of the findings of the ARC report?

23  
24 Marty Grossman,

25 That's correct.

26  
27 Councilmember Berliner,

28 I have some questions with respect to the composition of the ARC Committee, if you  
29 will, but I don't perceive that that's an issue that is properly before us here, but I just  
30 want to flag for my colleagues that I do think that's something that we might want to  
31 revisit at a future time as well as the whole question of the public process, whether it  
32 should be public or not. Now, you concluded I believe that it should be public, and that's  
33 an issue that is currently before the Circuit Court as I understand it?

34  
35 Marty Grossman,

36 That's correct. The way I read the statute and given the briefing that was filed with me, I  
37 would conclude that it should be public, there can be a private element to a public  
38 meeting.

39  
40 Councilmember Berliner,

41 Yes.

42  
43 Marty Grossman,



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1 Under the open meeting act, but you have to have an open meeting in order to go into a  
2 closed session, it still has to be noticed and so on. So you could still protect private  
3 documents at a closed meeting if you go through the open meeting process to do so.

4  
5 Councilmember Berliner,

6 Let me ask you to turn to the question of the restaurant.

7  
8 Marty Grossman,

9 Yes.

10  
11 Councilmember Berliner,

12 Which I found to be somewhat interesting. There was an effort as I appreciated from  
13 footnote I guess 14 on circle 38 for the applicant to change its mind that instead having  
14 a "quality restaurant", it might want some commercial space, and you concluded that it  
15 was a little late to make that modification, and therefore, that your action assumes and I  
16 believe requires that a restaurant be put there. Is that a fair characterization?

17  
18 Marty Grossman,

19 That is. I felt that it hadn't been before, the idea of it not being a restaurant had not been  
20 presented, as far as the record before me at least, to either technical staff or the  
21 Planning Board. The technical staff report refers to the restaurant so it was my  
22 conclusion that that was what they relied upon and therefore I thought it was at this  
23 stage a little late to raise the change.

24  
25 Councilmember Berliner,

26 What is the definition of a quality restaurant?

27  
28 Marty Grossman,

29 It's contained in the manual.

30  
31 Councilmember Berliner,

32 I know you made some reference to it, I'm going, I want --.

33  
34 Marty Grossman,

35 Right. It's actually defined specifically.

36  
37 Councilmember Berliner,

38 Is it three stars by--.

39  
40 Marty Grossman,

41 I'm trying to remember the name of the manual, the transportation --.

42  
43 Councilmember Berliner,

44 If you don't know.



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1  
2 Marty Grossman,  
3 Well, we have a specific page reference in the Development Plan.

4  
5 Councilmember Berliner,  
6 Yes.

7  
8 Marty Grossman,  
9 It's the Institute of Transportation Engineers that's the ITE trip generation --.

10  
11 Councilmember Berliner,  
12 Engineers are judging restaurants, this is frightening.

13  
14 Council President Praisner,  
15 No.

16  
17 Marty Grossman,  
18 This is an evaluation for traffic consideration and different kinds of restaurants generate  
19 different numbers of trips. For example, a quality restaurant under their definition  
20 wouldn't have a great deal of morning traffic whereas a fast food restaurant may have  
21 much more traffic in the morning and so on. And so they have broken down where our  
22 zoning, our local area transportation review guidelines put out by the County do not  
23 break it down that finely. And so, we went to a different manual which is allowed under  
24 our LATR guidelines.

25  
26 Councilmember Berliner,  
27 Yes, so, I appreciate the implications of a quality restaurant means less traffic for  
28 purposes of this conversation. I just didn't know whether or not that the definition of  
29 what constitutes a quality restaurant is in fact, shows that we're going to have great food  
30 at this particular spot.

31  
32 Marty Grossman,  
33 I don't think the applicant would guarantee that at this point, but we do know there is a  
34 definition and it's specified in textual binding element ten that it is this kind of restaurant  
35 as defined at page 1703 of the ITE manual.

36  
37 Councilmember Berliner,  
38 Let me ask you to turn to the question of green space if you would as well.

39  
40 Marty Grossman,  
41 Yes.

42  
43 Councilmember Berliner,



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1 And tell us, I am sure that there is in this document, an answer to the question. I see  
2 that there was some argument that the 30% requirement for green space could be met  
3 by a roof top green. Was that your conclusion as well?  
4

5 Marty Grossman,

6 Based on what technical staff has approved, and apparently in the past, as evidenced in  
7 this case, the uncontradicted evidence in this case, that that has been approved in other  
8 buildings as well using roof top space as included in this open space as long as it's  
9 available to all, at least all the tenants in the building. One might consider it a concern,  
10 but I would say that has been the practice according to the evidence in this case, and so  
11 technical staff did conclude that there was sufficient green space, and there is no  
12 evidence to the contrary so I so found.  
13

14 Councilmember Berliner,

15 Well, of all the conversation we've had thus far, this is the one that I find to be a little  
16 troubling because I quite frankly don't perceive the requirement of 30% green space to  
17 be directed primarily at the tenants, but as to the surrounding community as a whole, so  
18 I'm not in a position to dispute your findings that this justification has been used in the  
19 past, I just question the extent to which it is in fact an appropriate interpretation of what  
20 the underlying intent is with respect to green space.  
21

22 Marty Grossman,

23 Right, and that's certainly a very legitimate question which the Council may want to  
24 consider and that is how to define it. It's not well defined in the zoning ordinance. And so  
25 the technical staff has come to the conclusion it has, but that's certainly something that  
26 could be considered.  
27

28 Councilmember Berliner,

29 I would ask my more learned colleagues if they have any suggestions, if they share my  
30 concern with respect to this item as to how one could proceed as to whether or not it is  
31 a more generic conversation in light of the record that has been presented to us or if  
32 there is more specific action that could be taken. It sounds as if on the whole from my  
33 perspective that this is something that we ought to approve, but this piece of it I find  
34 troublesome and would appreciate any counsel that you have with respect to how to  
35 proceed in light of that. Thank you, Madame President.  
36

37 Council President Praisner,  
38 Councilmember Elrich?  
39

40 Councilmember Elrich,

41 Roger, I want to thank you for raising a number of the concerns you raised. In all the  
42 issues that I have ever been involved in the notion of counting a roof as open space, as  
43 any kind of public amenity, we've always talked about it on the ground that it was  
44 supposed to be relief from the density and the bulk of the building and it was supposed



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1 to be available to the community as a whole, not because people who live in the  
2 building and work on the building can walk up to a garden on top. So if this is permitted,  
3 this is a joke. This is not what's intended, I think. We talk about providing community  
4 open space in the community to try to provide the kind of relief that we're interested in.  
5 So, I hope that you know, it's, you can explain it, but this is, it still needs to change. If  
6 there's an explanation for why this counts, it shouldn't count. It may count under the law  
7 right now, but I think it's an issue for substantive revision, particularly as we continue to  
8 talk about rebuilding and revitalization at urban corridors. There's going to be nothing  
9 but concrete there, if everybody's allowed to throw some green on their roof and call  
10 that the open space and people on the street are going to walk up or elevator up to the  
11 top of 10 and 15 story buildings in order to enjoy something the County pretends is  
12 open space. I just think that you've raised and identified a pretty fundamental issue for  
13 planning in the future if not planning now. I share your concerns about the ARC  
14 Committee. And I have concerns about the way financial benefit or lack thereof is  
15 calculated because if developers don't have to take into account what they're required  
16 to build and purchase of land, then it makes it very easy to pay too much for the land  
17 and then turn around and declare that I can't possibly afford to pay this, to provide the  
18 MPDUs because look at my land costs. Whereas if I knew I, if I was buying land and I,  
19 and by law I was required to build a house for \$150,000 or \$160,000 I'm sure not going  
20 to spend \$200,000 for the lot that it sits on, and it seems to me that, you know, we've  
21 got a problem if we have a system that basically encourages people to pay top dollar for  
22 everything they're going to build and then turn around and come to us and say I can't  
23 afford to build the MPDUs because I paid too much for the land.

24  
25 Marty Grossman,

26 That's why I suggested that an objective procedure for the ARC might be more  
27 appropriate, but it's not in the record, and it's not an issue that's really before me. The  
28 ARC makes its recommendation --.

29  
30 Councilmember Elrich,

31 I think that's part of the problem. This is why I'm, you know, so glad we're reviewing the  
32 annual growth policy and dealing with the broader issues because these are the kind of  
33 things I think we need to have discussions about. I'd say the same thing about the  
34 general increase in density there. We say this is what we want for the community, and  
35 then the heights no longer matter if somebody uses the word affordable housing to  
36 produce their few units. And I think we need to look a little bit more carefully at what we  
37 do.

38  
39 Marty Grossman,

40 Well, they still certainly matter. I mean, you still have to look at questions of  
41 compatibility, and also there are very specific percentage increases that are allowed by  
42 the Montgomery County Code, so it's not -- it has to be within those percentages.

43  
44 Councilmember Elrich,





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1 And I think, you know, the fact that this at the entrance of Woodmont and there's going  
2 to be a tall building across the street from it and the rest of the sort of nondescript  
3 typical Montgomery County architectural high quality buildings lining Woodmont as it is,  
4 kind of makes it less of an issue that there's the height in this case. I'll point out that two  
5 of the three schools were over capacity even though the school system says there's no  
6 problem. And again, this gets to the issue of how many projects do you approve that  
7 individually produce no problem but if you look at them collectively, they produce a  
8 problem, and again, it gets back to what the appropriate school test is and again an  
9 issue that we're going to review under the AGP, and lastly I comment on the traffic.  
10 When I looked at the intersections that you count, and I can think of some pretty close  
11 by intersections that don't function at all, and again it gets to what you count in the road  
12 test, and if you took the worst case restaurant rather than the best case restaurant, the  
13 mistake that the applicant made between saying high turnover versus high quality, and  
14 you've got to wonder whether it was a mistake or not. The high turnover restaurant  
15 generates a lot more traffic and I would submit that most of us who have driven on  
16 Wisconsin Avenue don't consider that exactly the example of a functioning road in  
17 Montgomery County particularly in the area of NIH and where the BRAC is going to go  
18 in.

19  
20 Marty Grossman,

21 Well, the traffic study actually showed that even in the worse case scenario that the  
22 County standards for critical lane volume would not be exceeded at any of the studied  
23 intersections. The choice of the studied intersections was made by Transportation  
24 Planning Division.

25  
26 Councilmember Elrich,

27 Again, I understand the process.

28  
29 Marty Grossman,

30 Right.

31  
32 Councilmember Elrich,

33 I mean, it's a very well crafted process. As one planner said at the Forest Glen meeting  
34 about the light, about a project that it's a process that was crafted to guarantee that  
35 nothing failed, but this is the process that we're dealing with, and I'm bound to find  
36 things in accord with the process that's on paper at this moment.

37  
38 Marty Grossman,

39 Right. I mean there are of course other kinds of traffic measures that could be but are  
40 not now included in the --.

41  
42 Council President Praisner,

43 Well, but that's not part of the record that we're dealing with. I think this is a  
44 philosophical conversation and we have to deal with the record.



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Councilmember Elrich,  
Yes, and I recognize --.

Council President Praisner  
The data right now.

Councilmember Elrich,  
Yes, and I recognize the limitations that the data and the tests are one thing and what may appear to be common sense is a different thing but I'm bound by --.

Marty Grossman,  
Well, I want to address that briefly with something that is in the record and that is that there was testimony about question of cueing at nearby intersection and that found that there was not excessive cueing at the intersection of Woodmont and Battery Lane. So, there was some evidence beyond the pure LADR thing there.

Councilmember Elrich,  
Right.

Marty Grossman,  
The question that came up as to whether or not there would be a traffic study because the question of whether you had a high turnover restaurant or a high quality restaurant determined whether or not you exceeded the 30 trips cut-off which then resulted in a traffic study. But the traffic study was done anyway, so.

Councilmember Elrich,  
I think that, you know, this case and your report raised a lot of questions that need we to think about as we look at the next stage of what we're going to do, but I do recognize the difference between what I might like to see in a growth policy and what I might like to see in tests and what are currently in the tests.

Council President Praisner,  
Councilmember Floreen.

Councilmember Floreen,  
Thank you. I've got two questions, and one has to do with the house. What is the deal with the house? That's that really quite beautiful house.

Marty Grossman,  
Yes, the house is owned by Mr. Lipnick who is one of the applicants. He lives there. It was on the land at the time that the rezoning was approved in 2004. The challenge is that--.



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1 Councilmember Floreen,  
2 So we approved that previously as--?

3  
4 Marty Grossman,  
5 You approved the policy including it and had a statement in the resolution saying it was  
6 a nonconforming use.

7  
8 Councilmember Floreen,  
9 What does that mean when we say that in a zoning case, just that it's nonconforming,  
10 and are we requiring that to change that house in any way they would have to come  
11 back to amend the Development Plan?

12  
13 Marty Grossman,  
14 Yes. They would have to amend the Development Plan if they were changing the  
15 house. I would say what happened, the objection that Mr. Humphrey raised was that, he  
16 felt that the house was not a lawful nonconforming use because it had been erected  
17 after the property had been rezoned in an earlier rezoning to CT Zone and the CT Zone  
18 has a footnote in the zoning ordinance which allows you to have continued  
19 residential/office use of a property if there was an existing residence. There was a  
20 different preexisting residence on the property, but in any event that's what--.

21  
22 Councilmember Floreen,  
23 Well okay, it's a little wacky.

24  
25 Marty Grossman,  
26 I felt it was resolved by the Council's --.

27  
28 Councilmember Floreen,  
29 I guess my point here or my concern here about the house is, we've done this in a  
30 couple of other situations, where actually we've approved density that wasn't the density  
31 permitted by the zone. It was way below it frankly. Probably the opposite point of where  
32 Mr. Humphrey would go. But, and then that establishes a compatibility challenge for the  
33 next property like across the street in this case. So how would you treat this house  
34 when looking at another, well, how do we set, provide for the concern that someone in  
35 this house then might use the reduced size and scale of that as a challenge to some  
36 other zoning issue? I think the issue of the compatibility between the existing house and  
37 this project was raised in the case. It creates a precedent to a certain degree and  
38 redefines the basis for compatibility finding it seems to me, when you create something  
39 that is not built to the standards of the zone or even, you know, anywhere near it.

40  
41 Marty Grossman,  
42 Yes. It's certainly not the ideal situation to have the detached single family home in the  
43 PD 75 Zone and it's unusual. However, I would say that it's not a question of  
44 compatibility in the sense of compatibility with surrounding development because --.



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1  
2 Councilmember Floreen,  
3 I'm not worried about the compatibility issue in this case, but I'm worried about the  
4 compatibility issue in the next case.

5  
6 Marty Grossman,  
7 Well, the point I was trying to make is --.

8  
9 Councilmember Floreen,  
10 Because that sets a standard.

11  
12 Marty Grossman,  
13 --the distinction between compatibility with surrounding development and compatibility  
14 within the site itself, and ordinarily, we don't look at compatibility within the site itself.  
15 However, there is as part of this particular zone, it mentions looking at compatibility of  
16 the elements within the site. So I did look at that. But it's not a question of compatibility  
17 with surrounding, in any future cases.

18  
19 Councilmember Floreen,  
20 Well, let me say this to you. I would ask that the next time you see it, have a case where  
21 there is a situation which is significantly less than the zoning that's being requested or  
22 that's permitted, that you think about including language that addresses that issue for  
23 consideration for the following matter because we have other situations in Bethesda and  
24 in Silver Spring where for whatever reason, the market forces have caused different  
25 densities to be desirable, which is great and fine, but then the people move in, and they  
26 say wow, oh this isn't a city. This isn't an urban area. We want other things to be like  
27 ours, and this is the challenge that we face. So, I'd ask you to give that some thought.

28  
29 Marty Grossman,  
30 I understand.

31  
32 Councilmember Floreen,  
33 Number two. When was the last time we rezoned something based on it being a quality  
34 restaurant?

35  
36 Marty Grossman,  
37 Well, this is not a rezoning. Well, -- Actually, this is Development Plan Amendment.

38  
39 Councilmember Floreen,  
40 Well, we're zoning this to require it as a binding element.

41  
42 Marty Grossman,  
43 We're not rezoning. We're --.



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1 Councilmember Floreen,  
2 It's a binding element.

3  
4 Marty Grossman,  
5 Right. It's a binding element but it's a Development Plan Amendment. And so, we don't  
6 have some of the considerations that we have in a rezoning but I would say that it's an  
7 unusual circumstance but it was something that was part of the planning process that  
8 was approved, and it is clearly consistent with the Woodmont Triangle amendment  
9 language in the 2006 amendment of having this kind of amenity available.

10  
11 Councilmember Floreen,  
12 Yeah, I'm worried, what happens if the quality restaurant decides to move out and in  
13 comes a quality dress shop? Will we be upset?

14  
15 Marty Grossman,  
16 Well, in order to do that, they'd have to ask for a Development Plan Amendment.

17  
18 Councilmember Floreen,  
19 Well, is that --.

20  
21 Marty Grossman,  
22 Because they now have a binding element.

23  
24 Councilmember Floreen,  
25 Is that really a good idea? Do we care that much?

26  
27 Marty Grossman,  
28 Well, --.

29  
30 Councilmember Floreen,  
31 As a matter of public policy?

32  
33 Marty Grossman,  
34 I would suggest, as I said in there --.

35  
36 Councilmember Floreen,  
37 Possibly a quality, anything that has the equivalent amount of trips. That's the real  
38 issue.

39  
40 Marty Grossman,  
41 Well, no, I think that's one of the issues, but I don't want to speak for the Council, the  
42 Council's planning perspective, they, you might care whether or not you had ground  
43 level restaurants available rather than ground level dress shops. I can't speak to that.  
44 That wasn't my, my issue was to review what was presented to me and the question of



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1 whether or not it should be changed, and what was presented to me was that it would  
2 be a restaurant, and then because of the traffic issues, it had to be denominated a  
3 quality restaurant at the time, and so the question was whether or not there should be  
4 any changes in what the applicant had proposed initially, and I felt that it was too late to  
5 change it without remanding it again to the technical staff for another look.

6  
7 Councilmember Floreen,

8 Well I have got to say, I think the applicant is -- should rethink his, well, it makes no  
9 sense to commit to something that you, that for the long term. It's going to have to go  
10 through a process that's lengthy and expensive if anything changes. And I think it's  
11 dangerous to even encourage applicants to commit to explicit uses that may or may not  
12 hold over time. Because I don't know what a quality, I know of many quality restaurants  
13 and this is a great place to have them, and it's certainly something we want to  
14 encourage. But to say that we're certain what that is and that sends a message and it  
15 creates a really almost a zoning use, it's an ITE issue?

16  
17 Marty Grossman,

18 Yes, it's specified --.

19  
20 Councilmember Floreen,

21 ITE knows what it is?

22  
23 Marty Grossman,

24 Yes, it's defined. It is specifically defined --.

25  
26 Councilmember Floreen,

27 As a not fast food restaurant?

28  
29 Marty Grossman,

30 No, a quality restaurant is defined specifically in the ITE manual, the page is referenced  
31 in the --.

32  
33 Council President Praisner,

34 Can I piggyback on that Nancy? Is it defined by the number of trips it generates? Or is it  
35 defined by the type of business it does?

36  
37 Marty Grossman,

38 It's defined by the type of business it does in one sense. I'd have to pull out the specific-  
39 --.

40  
41 Councilmember Floreen,

42 It's non morning rush hour business.

43  
44 Marty Grossman,



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1 No, it's not mostly morning rush hour business. That's why it was significant from a  
2 traffic standpoint.

3  
4 Councilmember Floreen,  
5 Well, okay, but I just see trouble ahead for this kind of solution.

6  
7 Marty Grossman,  
8 I understand the concern about excessive specificity. I understand it is a concern.

9  
10 Councilmember Floreen,  
11 Don't like it.

12  
13 Council President Praisner,  
14 If I may piggyback, I find it incredible that we would be approving something and that an  
15 applicant would come forward with that kind of specificity because in my view, it sits  
16 vacant unless it's got a replacement quality restaurant or unless they want to spend the  
17 money to come back and apply for an application to change it. And that's pretty  
18 significant. Significant funding, and a significant process. In the future, I think it would be  
19 helpful for us to know when there are those descriptors or binding elements that are so  
20 specific that I don't believe I could find page 1703 in the manual, in the record for us to  
21 review. And I think it would be very helpful for the public who may look at only this  
22 packet and the Council which traditionally reads this packet and not the entire record, a  
23 copy of that specific page so we know in the record what specifically is the definition of  
24 a quality restaurant as described by engineers, and of course, the point is that it is  
25 based on trip and traffic that the engineers have created this characterization. And  
26 again, it's not part of this record, but my reflection as we have talked about these things  
27 in the growth policy and other issues is these are national definitions, not necessarily  
28 local definitions, and when we start to talk about things like this, it becomes helpful to  
29 understand whether we as a Council or whether we the community has views that may  
30 or may not be different about, or data that may or may not be different about the trip  
31 generation associated with the restaurants. And the Bethesda Chamber might be  
32 interested in knowing what a quality restaurant as described by engineers would  
33 happen to be. The other comment I had, two other comments, on circle four, page four  
34 of your report, you talk about the buildings that are confronting and adjoining the  
35 parcels. I would appreciate it in the future, based on the debates that we've had in the  
36 past, if you or applicants refer to buildings by stories that they also refer to the number  
37 of feet associated with the stories, and that in your summary and the report, and if you  
38 could ask Francois as well, that if we say from three to five stories that we put in  
39 parentheses 47 to whatever or 30 to whatever feet, so that we know the specific feet  
40 since there have been debates in the past about how folks use stories.

41  
42 Marty Grossman,  
43 We will do that.





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1 Council President Praisner,

2 The other question or comment that I have is, we keep talking about the most recent  
3 Council actions of 2006 on the Woodmont Triangle amendment, but we all know that we  
4 did not do significant work, if any, on Battery Lane and that specific area. So continuing  
5 to refer to the amendment when in essence the general area that we're talking about,  
6 including the fact that this is land located on Battery Lane when we have not yet  
7 discussed Battery Lane, we have asked the Planning Board to go back and do a more  
8 comprehensive work on Battery Lane relating it to moderate price but also just the  
9 whole idea of moderate income becomes an issue that I think is almost lost in this  
10 discussion because we keep referring to the actions of the Council on Woodmont  
11 Triangle in '06 and the previous actions on Woodmont Triangle when in fact we carved  
12 out significant pieces one could argue in this generic area related to further work for the  
13 Planning Board that is in essence outstanding as yet.

14  
15 Marty Grossman,

16 Right. That was an issue that was raised in the hearing.

17  
18 Council President Praisner,

19 Yeah.

20  
21 Marty Grossman,

22 And I felt that while there was that reservation in the language, I think it's block 17 in  
23 that Woodmont Triangle area, by the Council saying that they would revisit, that the  
24 Council would revisit this issue, I felt that there were general statements within the  
25 Woodmont Triangle amendment which applied to this area as well, and so we applied  
26 that --.

27  
28 Council President Praisner,

29 Well, it may apply to Woodmont Avenue, but I'm not sure that we've talked as  
30 extensively about what we want to happen on Battery Lane.

31  
32 Marty Grossman,

33 Right.

34  
35 Council President Praisner,

36 Per se.

37  
38 Marty Grossman,

39 I also might mention that in fact, the record does contain at exhibit 80, contains among  
40 other things, the language used by the trip generation, the ITE trip generation manual  
41 and describes quality restaurant zoning. It's actually a page in the reference of this  
42 case.

43  
44 Council President Praisner,



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1 I understood that.

2  
3 Marty Grossman,  
4 Okay.

5  
6 Council President Praisner,  
7 But it's not a page in the packet here.

8  
9 Marty Grossman,  
10 I see.

11  
12 Council President Praisner,  
13 That was my point.

14  
15 Marty Grossman,  
16 Oh okay.

17  
18 Council President Praisner,  
19 And when you have things that relate to binding elements, I think it would be helpful in  
20 the future if the packet before the Council incorporates the language or the document,  
21 abbreviated or otherwise.

22  
23 Marty Grossman,  
24 I understand.

25  
26 Council President Praisner,  
27 But incorporates that kind of information for the Council's understanding and  
28 consideration.

29  
30 Marty Grossman,  
31 Certainly.

32  
33 Council President Praisner,  
34 Personally, I think this is a very close call because of the issues that are still outstanding  
35 in the area, because of the kind of binding elements that cause me some question and  
36 also because narrowing on what Ms. Floreen said, I'm not sure that I want to continue to  
37 perpetuate single family homes in this general area in a way that continues to have  
38 Development Plans in front of us with that situation. So, and one could argue that  
39 perhaps there are other designs for this site that could incorporate the needs without the  
40 additional height if one were looking at the broader zoning for the area. In addition, I  
41 share my colleagues, as someone who in essence had a lot to do with the creation of  
42 the Alternative Review Committee, that it is an issue that we will continue to look at. I  
43 very much appreciate the People's Counsel's roles in making sure that committees are  
44 public and need to have that kind of review and if folks go through this process that



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1 demonstrates the financial and other justification for that parcel and the rationale, they  
2 need to be prepared to know that the public has a right to see them as well. We have  
3 two other lights again on this item. Councilmember Berliner.

4  
5 Councilmember Berliner,

6 I would just like you to state again for the record, in so far as the principal objection with  
7 respect to this from the community, had focused on whether or not this proposal was  
8 consistent with the master plan. You concluded unequivocally, as I appreciate it, that it  
9 is in fact consistent with the master plan; is that correct?

10  
11 Marty Grossman

12 That's correct.

13  
14 Councilmember Berliner,

15 And secondly, if you would, I guess I would ask if it is appropriate, Madame President,  
16 to ask staff as the staff did come to the table and again --.

17  
18 Council President Praisner,

19 To respond to the green space.

20  
21 Councilmember Berliner,

22 To respond to the green space because there is a footnote, and tell me, I had it, and  
23 then I lost the page number, with respect to, that there was testimony that other  
24 buildings have used roof top for this purpose, but to the extent to which you could speak  
25 to the public policy question here and to the extent to which this is commonly done. I  
26 think a number of us believe this is not appropriate public policy, but I don't have a  
27 context for looking at this.

28  
29 Jeff Zyontz,

30 Green area is a defined term in the zoning ordinance. It is what's required in this zone  
31 as opposed to public use space which is required in CBD Zones which has that public  
32 attribute. Typically, what it refers to in the definition are those things that are  
33 recreational and attributes for the residents.

34  
35 Councilmember Berliner,

36 For the residents.

37  
38 Jeff Zyontz,

39 So, a swimming pool is specifically identified as green space despite that it doesn't look  
40 green unless you wouldn't want to go into it.

41  
42 Councilmember Berliner,

43 At my house, okay. Never mind.



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1 Jeff Zyontz,

2 Okay. But you can see that given those recreational aspects of it, green space on a  
3 roof, as a recreational attribute to the residents would qualify.

4  
5 Councilmember Berliner,

6 Okay, so the fundamental question is, that since this is green space, is in fact as has  
7 been suggested, a tenant issue not a community issue as it's been defined?

8  
9 Jeff Zyontz,

10 Yes. Correct.

11  
12 Councilmember Berliner,

13 That's very interesting, and so that's the question that I think that we need to address,  
14 and therefore, it would be inappropriate for us to act, if you will, adverse to this  
15 application on that basis and so far as it is, in fact consistent with your appreciation of  
16 the intent of the zoning ordinance currently.

17  
18 Jeff Zyontz,

19 And in fact, in the PD Zone, it has a separate section for land dedicated for public use,  
20 and that deals with dedication as opposed to access and permission. So it's a very  
21 different zone than the CBD Zones that have public use requirements in exchange for  
22 the density.

23  
24 Councilmember Berliner,

25 For those of us that are concerned about the "canyon-like aspect" and that as we move  
26 to a more urban environment, that we do not lose, if you will, urban parks and green  
27 space in our urban environment, it's in that context that I think those of us want to relook  
28 at this issue, but again, what we are dealing with before us now is a matter that was  
29 developed on the record and is apparently consistent with the law as it exists today. So  
30 that's where we are. Thank you, Madame President.

31  
32 Council President Praisner,

33 Thank you. Councilmember Elrich.

34  
35 Councilmember Elrich,

36 Just a quick question for future, because I'm sure we'll be seeing you again.

37  
38 Marty Grossman,

39 Yes.

40  
41 Councilmember Elrich,

42 I was trying to get to the number of units, how the 22% worked, and I could not cleanly  
43 come to the number. And a chart would have been helpful to show what was required.  
44 Like for example, you reference option four, 19 units, no MPDUs. What happened to



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1 20? How did we get to a 22% density, and what does the density bonus translate into in  
2 terms of units? Because, if you tell me it's 22% higher or bulkier, that doesn't tell me  
3 anything about the number of units, how that changed.

4  
5 Marty Grossman,  
6 Right. The 22% is specified in Code section 25, in Title 25A of the Montgomery County  
7 Code specifies given a percentage of MPDUs, what additional percentage you may  
8 have in terms of density and height.

9  
10 Councilmember Elrich,  
11 So, I was trying to translate which those two things were, and I couldn't quite get there.  
12 So I'd like, you know, if you do one of these things again, when you do one of these  
13 things again, a little chart that shows how all this plays out would be helpful.

14  
15 Marty Grossman,  
16 Alright.

17  
18 Councilmember Elrich,  
19 Thank you.

20  
21 Council President Praisner,  
22 One last comment going back to the single family home continuing. I think there was  
23 significant logic by the Council to retain an existing single family home approved with  
24 ten townhouses. I fail to see the logic associated with the kind of height that we're  
25 talking about now and continuing to approve as a design for that site, a single family  
26 home, and given the problems that I think Nancy raises as well, I think it raises some  
27 concerns in the future. We get a justification for more height when we're using the  
28 property to retain this single family home that is not in my view as compatible with the  
29 higher building than it might have been with the townhouses of the original plan. I see  
30 no other lights. Yes.

31  
32 Jeff Zyontz,  
33 Just a correction. I do note that green area as an area of land associated with the same  
34 tract of land and then goes on to say the recreational aspects of it, but it's my  
35 understanding in this case that the Planning Board interpreted that to mean the space  
36 on the rooftop in this case.

37  
38 Marty Grossman,  
39 Well, the Planning Board approved, and technical staff had approved as well and they  
40 reviewed what the green space was.

41  
42 Council President Praisner,  
43 I think that issue, as Councilmember Berliner has raised, is an issue that, especially with  
44 legislation that requires green buildings, is going to raise a question of whether you



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1 satisfied those requirements in certain ways in the future that I think will generate more  
2 conversation. Alright. We have a motion in front of us by Councilmember Leventhal,  
3 seconded by Councilmember Ervin I believe to approve this DPA. Madame Clerk,  
4 please call the roll.

5  
6 Council Clerk,  
7 Ms. Ervin.

8  
9 Councilmember Ervin,  
10 Yes.

11  
12 Council Clerk,  
13 Mr. Elrich.

14  
15 Councilmember Elrich,  
16 No.

17  
18 Council Clerk,  
19 Ms. Floreen.

20  
21 Councilmember Floreen,  
22 Yes.

23  
24 Council Clerk,  
25 Ms. Trachtenberg.

26  
27 Councilmember Trachtenberg,  
28 Yes.

29  
30 Council Clerk,  
31 Mr. Leventhal.

32  
33 Councilmember Leventhal,  
34 Yes.

35  
36 Council Clerk,  
37 Mr. Andrews.

38  
39 Councilmember Andrews,  
40 No.

41  
42 Council Clerk,  
43 Mr. Berliner.



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1 Councilmember Berliner,  
2 Yes.

3  
4 Council Clerk,  
5 Mr. Knapp.

6  
7 Councilmember Knapp,  
8 Yes.

9  
10 Council Clerk,  
11 Ms. Praisner.

12  
13 Council President Praisner,  
14 No. The DPA is approved 6-3. Thank you. We will now move to, a little late, but I believe  
15 we can move through the process. We can now move to the worksessions and  
16 consideration of the action associated with Collective Bargaining Agreements, and I will  
17 turn it over to the Chair of the Management and Fiscal Policy Committee. Let me just  
18 clarify for my colleagues that the actions on compensation and benefits that we are  
19 taking today relate to the two Collective Bargaining Agreements. The other is in  
20 essence a general consent that the Council has, but do not require a formal vote. The  
21 two votes that are required are on the FOP contract and the MCGEO contract.  
22 Councilmember Trachtenberg.

23  
24 Councilmember Trachtenberg,  
25 I thank you Council President Praisner for that clarification. In view of the time, I'm going  
26 to try be as concise as possible, and I certainly note that our Staff Director as well as  
27 our attorney Mr. Faden are both here to discuss any questions that Councilmembers  
28 may have. I'm going to start just by summarizing the compensation and benefit issues  
29 for the agencies, again noting what the President said which is this doesn't require  
30 action. The first aspects of this clearly are pay changes and the recommendations from  
31 our Committee were for the County government to support funding for the FY08  
32 increments and general wage adjustments requested for MCGEO Local 1994 units, the  
33 FOP Lodge 35, Police Management, and IAFF Local 1664 Fire and Rescue  
34 Management and under, unrepresented employees, and also to approve the salary  
35 schedules, and again, I note that they're in your packet on circles 32 to 40. We clearly  
36 also recommended approvals relating to the retirement program including the County  
37 contribution of \$112.3 million for the employee's retirement system, and 12.3 million for  
38 the retirement savings plan. And again, the budgets on all three retirement plans were  
39 approved as well, and they are on circle 31 for those that need to look at them. The third  
40 item we clearly discussed were the compensation related NDAs and the Committee  
41 opinion was that we should support all six Non-Departmental Accounts. And I'm going to  
42 move on to the group insurance which was also a meaty conversation in Committee and  
43 the Committee recommended that we support the group insurance funding requests  
44 both for active employees and retirees, that we approve the recommended expenditures





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1 of the employee health benefits health insurance fund, and that with regard to the  
2 retiree health insurance continue to work with the multiagency OPEB work group on  
3 implementation of the GASB statement number 45, again, the five-year funding  
4 schedule which was approved by the Council on April 10th. And at this point, I would  
5 ask colleagues to join in the fun if they have any comments about this, but it doesn't  
6 seem like you do.

7  
8 Council President Praisner,  
9 No, there are no lights. Council Staff Director Farber.

10  
11 Stephen Farber,  
12 Yes, what I did want to mention is that we received late yesterday, the budget  
13 adjustments from the County Executive, we receive them this year at this time, at every  
14 year at this time, and there were three of the adjustments, and by the way, they are very  
15 minor adjustments this year. But three of them are compensation related. And I did want  
16 to mention them since we're taking this up right now. Two of them, I think require no  
17 further comment. They relate to the Bargaining Unit schedule, the uniform correctional  
18 management salary schedule and also to the sheriff management salary schedule. The  
19 schedules that you have in your packet are correct. And what the Executive has simply  
20 done is to say that with respect to the first one, there is \$18,600 more that was not  
21 included in his March 13th budget, and with respect to the second one, \$49,980 more,  
22 so I think with that clarification, we're going to be fine with respect to those. There is one  
23 third reference to, a third reference to compensation in the budget adjustments that we  
24 received, and this is the compensation adjustment NDA, and it's an increased cost of  
25 \$57,590 to basically pass through to non-represented members a 1% increase that is  
26 being given to Bargaining Unit members. This is with respect to longevity, performance-  
27 based pay. And I think it be useful if Mr. Adler could come forward and clarify this  
28 because this is something that the Committee did not have an opportunity to discuss.  
29 And Mr. Espinoza from OMB.

30  
31 Joe Adler,  
32 Morning. This is an attempt to keep parity with the non-represented employees. If you  
33 all recall, when this original clause was negotiated we did not do a pass through to the  
34 non-represented employees. Council at that point expressed a desire that we do  
35 something similar if not exactly alike for the non-represented employees and we did so  
36 last time on this, since we did increase by 1% the longevity increases for the union  
37 employees for MCGEO employees, we felt in terms of equity and parity we'd want to do  
38 the same for thing for the non-represented employees so that's what this \$57,000  
39 represents.

40  
41 Stephen Farber,  
42 Basically as matters now stand, because of action taken by the Council, the last  
43 Council, there is a 1% longevity increment for unrepresented employees when they  
44 have been here 20 years and reached the top of their pay grade. And that requires, as I



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1 recall, a performance rating that is at least highly successful. Right. And what you're  
2 proposing, if I understand this correctly, that was not in the March 13th budget, is that  
3 that 1% become 2%; is that correct? And that is parallel with the increase that  
4 represented employees, those represented by MCGEO get, which is the 2% current  
5 longevity increment is becoming 3%.

6  
7 Joe Adler,  
8 Yes.

9  
10 Stephen Farber,  
11 Right. And that one is not performance based, it's automatic. Is that correct?

12  
13 Joe Adler,  
14 Yes.

15  
16 Council President Praisner,  
17 I just want to make a couple of comments. I believe that the Council has always tried to  
18 be consistent and fair with unrepresented employees in order to reflect the fact that in  
19 some cases individuals are in the same offices and that we want to be responsive to  
20 unrepresented employees as well. I've had informal and passing conversations with my  
21 colleagues over the past few weeks as folks can imagine. I think there is significant  
22 interest on the part of Councilmembers, not everyone has raised this, but some have,  
23 on the part of Councilmembers to have a better understanding of the Collective  
24 Bargaining Process and what the County government goes in expecting to achieve from  
25 outcomes perspectives, and to ensure, assure ourselves that it is a rigorous process  
26 that reflects objectives that go beyond minimal interaction as far as priorities are  
27 concerned from a County government perspective when we get to the compensation  
28 pieces. At the same time, I detect a significant interest in looking at the performance  
29 appraisal process, and the quantities of employees, et cetera, who find themselves in  
30 the distribution levels of highly successful, successful et cetera. We had some  
31 significant conversations in the MFP Committee over the years about what our curve  
32 looks like, bell shape or otherwise when it comes to the MLS and others. And having  
33 had to do performance appraisals for the federal government myself when I managed  
34 some units in the federal government, I know it can be a challenging process, but it is  
35 one of the most critical roles that an, a supervisor plays. And there, I think, needs to be  
36 some expectation that there's going to be a distribution along that evaluation process,  
37 albeit recognizing that we have superior employees but this is not Lake Woebeagon and  
38 therefore everyone is not exceedingly special, and those evaluations should reflect both  
39 expectations and performance. So I think it the MFP Committee, given the  
40 conversations that I've had, should probably look to focus in this interim period on the  
41 issues of performance appraisals and distribution of them, et cetera as it relates to MLS  
42 but not exclusively MLS, and also to spend a little more time on how we might want to  
43 improve upon the Collective Bargaining Process both for the public's understanding of it  
44 as well as Councilmembers' understanding of what are the objectives going in as well



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1 as what is the process and schedule that we are reviewing. So I say that based on  
2 informal conversations, and as I said, not unanimous viewpoints, but I think enough that  
3 I think we would all benefit from having that kind of discussion and also benefit from a  
4 serious exploration of those processes. All we see at the end are the outcome and the  
5 dollar amounts, and the dollar amounts, they are troubling in my view from a standpoint  
6 of the significant numbers, from a standpoint not of dollar amounts in and of themselves  
7 but from a standpoint of the ongoing and long term implications of them. And just as the  
8 GASB issues raised significant questions and the fact that our prefunded retirement  
9 percentages for County employees is lower than it used to be. So, I mean, the scales  
10 have problems. When you keep piling on one level, there are problems with the rest of  
11 the scales. And folks are coming to us for increased program and increased program is  
12 delivered by employees. And I think the expectations are unrealistic if we're going to  
13 continue to have these imbalanced challenges ahead of us. So, I'll just make those  
14 comments.

15  
16 Councilmember Trachtenberg,

17 Well, at this point, I think a thing I would certainly like to state for the record is that I  
18 think it's important to note as well, our County is doing very well in terms of our  
19 employees in comparison to some of the other jurisdictions in the region, and I would  
20 note to colleagues that if they look in the packet that they have today starting on page 4,  
21 there's a good summary of comparison, and I think that's important to remember. You  
22 know, clearly we pride ourselves in having an excellent work force, but while our  
23 investments continue to be made in pay and benefits, we also have to recognize that  
24 our circumstances might be changing, and certainly there's been a good conversation  
25 about that, and I think if you frame what the Council President has raised about the  
26 process, you know, given our level of responsibility in this, it is important to have a  
27 sense of what objectives might be. And I know in our Committee, we've had  
28 conversations about that. Again, there's nothing wrong with making investments in our  
29 work force and I would suggest that the Council has a consensus to do that. But  
30 nonetheless, I think there are a lot of elements that we need to start having some  
31 conversations around no matter how painful they might be. Because I suspect that  
32 what's going to be the case next year or the year after that is going to be very different  
33 than what we're looking at this year. And I just want to be clear about that.

34  
35 Council President Praisner,  
36 Council Vice-President Knapp.

37  
38 Councilmember Knapp,

39 Thank you Madame President. Thank you Chair Trachtenberg, appreciate your  
40 comments. Just a few remarks. And I agree with some of what the Council President  
41 has said. This is a difficult process, I think because we as a Council kind of get  
42 everything at the very end, so the snowball is already really big, and we're at the bottom  
43 of the hill and we're there to catch it one way or the other or get run over by it. And it's a  
44 challenge because this is a difficult time for us to begin asking questions because, in all



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1 fairness, the parties have been at the table, all negotiated, and I'm very mindful of that  
2 and very respectful of that process. That being said, it's also I think important for us to at  
3 least ask general questions to understand kind of how things transpired and how things  
4 got to where they did. And so, with some trepidation, I know asking questions is seen by  
5 some as a bad thing, but I don't think it's indicative of any lack of support, it's just trying  
6 to clarify an understanding. One of the things that Ms. Praisner just indicated though is I  
7 think we need to have a better level of participation at least on the part of the Council so  
8 we have some understanding of what's going on in the process during the process as  
9 opposed to waiting for the three weeks when we start to do a budget to understand kind  
10 of what's happened at the end of the day. And that may be our fault. That's not  
11 necessarily something to cast aspersions in any particular direction. It may be a matter  
12 of us just engaging more actively than we have in the past. And I know there are a  
13 variety of rules and so I think it's something we need to look at moving forward. One of  
14 the, there are a couple of things in the packet, I just wanted to touch on real quick and I  
15 think that we have a tendency to make statements sometimes because we make  
16 statements and I'm not sure how we reinforce them. And so, one of the things I wanted  
17 to look at, if you look at circle 4, is second paragraph, it says the County is an  
18 outstanding employer, and that's a nice statement to make. I'm always intrigued as to  
19 how we reach the conclusion to make such a statement. And as we, in the midst of a  
20 negotiating process, I'm curious as to how do we know that exactly? Is that purely on  
21 the basis of what our compensation is or is that some survey that we've done as it ranks  
22 County governments as employers? Or, I'm just curious as to how we reach that  
23 conclusion.

24  
25 Council President Praisner,  
26 Language, so --.

27  
28 Stephen Farber,  
29 Yeah, it's my language and so I will take responsibility for it and stand behind it. Well, I  
30 think there are different ways to measure it. One is, for example, what kind of a  
31 response do we get when we advertise for positions in our County agencies, and the  
32 answer to that, as I understand it, is that we get an outstanding response because  
33 Montgomery County is perceived to be an outstanding employer. My own view is that  
34 it's a privilege to work for Montgomery County, and I think that view is widely shared.  
35 And even though we live in an economy that is virtually at full employment, what we find  
36 for recruitment after recruitment is that we have excellent candidates who want to work  
37 for the County government and for other County agencies. I think another way to  
38 answer that question, Mr. Knapp, has to do with the salary surveys that we've been  
39 doing now since 1994 for jurisdictions in the region. And what those surveys  
40 consistently show is that year by year, in terms of the increases, we do very well, for  
41 example, this year, we have for MCGEO, a 4% general wage adjustment, and of  
42 course, that's only part of the story. Everybody elsewhere gets steps, and for those  
43 eligible for steps, there's three and a half percent. So the pay increase for MCGEO  
44 employees is seven and a half percent. In fact, MCGEO put out a press release last



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1 week saying that for those not at top of grade, the impact of this bargaining agreement  
2 is a pay increase of more than 26% over the next three years, and I did the math, and  
3 that's exactly right. And that's perhaps why 94% of those who voted for the MCGEO  
4 contract, voted on the MCGEO contract voted for it. Then we have the police  
5 agreement, and there is basically a change in the entire pay plan that means a seven  
6 and a half percent increase for both police and police management, and then the  
7 increment would be on top of that for those eligible. For the fire fighters, it's 5%.  
8 Contrast that with, for example, Arlington County reported in the Post on Sunday at 1.5  
9 percent. Fairfax, 2.9. The state of Maryland, 2.0. The federal government, 3.0. Frederick  
10 County, 2.0. And I think you get the sense of what the differences are, and in our  
11 studies, going back to 1994, we perceive these differences year over year. In addition,  
12 the packet, the appendix to the packet did include this section from the Office of Human  
13 Resources, something they've been doing since 1991. It's wage and salary  
14 comparability, and I have additional copies for the Council. This was part of the April 16  
15 appendix. But basically, if you go through this, and there are many different ways that  
16 OHR looks at these matters, and there are certain exceptions to be sure, but the weight  
17 of evidence is very clear, and it is that wages and salaries in Montgomery County  
18 compare very favorably with those elsewhere in the region.

19  
20 Councilmember Knapp,  
21 Okay. So primarily on the basis of wages and salaries, benefits and compensation, is  
22 how we usually, is how we generally get to the outstanding piece.

23  
24 Stephen Farber,  
25 Yes.

26  
27 Councilmember Knapp,  
28 That's okay. I mean, I'm just trying to make sure I understand how we've defined that.

29  
30 Stephen Farber,  
31 Sure, these are wages and salaries.

32  
33 Councilmember Knapp,  
34 Okay.

35  
36 Stephen Farber,  
37 But our retirement benefits and our health benefits also compare very favorably.

38  
39 Councilmember Knapp,  
40 Mr. Adler, I'm just curious, since we've now just concluded a round of negotiations with  
41 all of our employees, what is the general, first of all, do we survey our employees on a  
42 regular basis to get a sense of kind of job satisfaction and the issues within the work  
43 place, and then you have just had direct negotiation, so is there some sense as to how,





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1 what is the sense of employees throughout this process as you've kind of moved into,  
2 kind of, the next three years of contracts?

3  
4 Joe Adler,  
5 We are prohibited, or at least the practice has been not to survey employees because  
6 that would be considered an unfair labor practice.

7  
8 Council President Praisner,  
9 I want to remind my colleagues that, the police and fire employees as yet, do not  
10 receive a packet of information that shares with them the status of their current benefits  
11 and implications because the unions believe that would be direct communication  
12 between the employer and the Bargaining Units, and that is prohibited under their view  
13 of unfair labor practices. MCGEO has agreed to that so MCGEO employees as well as  
14 unrepresented receive the annual report of the status of their benefits and the benefits  
15 that they receive. The survey document that Councilmember Knapp refers to and Mr.  
16 Adler comments on would have to, I think by Mr. Adler's interpretation, be negotiated  
17 because it would be in direct communication with the Bargaining Units. That is an issue  
18 that I think this Council needs to discuss further after this process.

19  
20 Councilmember Knapp,  
21 Okay. So we can't solicit --.

22  
23 Council President Praisner,  
24 We can't talk to our employees.

25  
26 Councilmember Knapp,  
27 We can't talk to our employees. So do we interact directly with the unions themselves to  
28 see if there are any surveys that they would administer to get some sense or in the  
29 course of the negotiation process?

30  
31 Joe Adler,  
32 We normally engage management and we talk to each of the departments and they talk  
33 to their managers up to the point that the unrepresented folks to get a sense of what's  
34 going on in the work place. We also look at all of the grievances that have come in and  
35 complaints that we have received from each of the unions concerning work place  
36 issues, and we have ongoing communications throughout the year on work place issues  
37 because none of the three of the Bargaining Units are shy about bringing some issue to  
38 our attention if they believe it merits our attention and needs to be resolved.

39  
40 Councilmember Knapp,  
41 Okay. Well, and the reason I'm asking the question is we are a service business, a  
42 service entity, if you will, a service provider to the residents of our County, and in order  
43 to do that and do that well, we need to make sure that we continue to attract, retain the  
44 best and the brightest that are out there. And so I guess my broader question is, once



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1 we've done this process, gone through this negotiation process, how do we know what  
2 would attract a great employee to come to Montgomery County and how do we keep a  
3 great employee? And so, I'm just kind of curious as to what are we looking for if we  
4 don't know, if we can't get a good sense of what our employees are looking for? How do  
5 we make sure at the end of a negotiation process, we've just put together allows us to  
6 attract and retain the best and the brightest?

7  
8 Joe Adler,

9 As Mr. Farber stated, we do have, for each of our vacancies, we have many, many,  
10 many dozens, sometimes hundreds of qualified and sometimes highly qualified  
11 applicants so that, with the exception of certain positions that are considered hard to  
12 recruit nationally, we do not have a problem of getting qualified applicants for our  
13 vacancies. We also do to the extent possible a, folks that leave, we send out a  
14 questionnaire saying what, you know, tell us why you left, is it personal, is it supervisory  
15 related without getting into the specifics and actually we do send you that information.  
16 That comes, that's in our, every April we put that out and that's part of our documents.  
17 First of all, we have, our rate of folks leaving is much less than the industry. It's less  
18 than 6% and most, private sector, I think it's about 15% and even in government it's  
19 closer to eight, and ours is below six and has been for the last several years, and of  
20 those six, the majority are either retiring or have, you know, personal reasons that their  
21 spouse moved out of the region or, you know, they decided to stay home because of  
22 school children. A few, one or two percent clearly state that they don't either like the  
23 benefits or they have problems with their supervisors so we take those as proxies. That  
24 on the whole we do not have an issue with either morale or being able to attract, you  
25 know, the best and the brightest as you mentioned.

26  
27 Councilmember Knapp,

28 Okay. In the packet Mr. Farber talks about the concept of productivity, slowing work  
29 force growth, improving productivity and the only criteria that appears, at least identified  
30 here is number of tax supporter work years per 1,000 population. I think the Council  
31 President was very accurate in her statement that our population expects us to do a lot  
32 more than perhaps the expectation was in the past and so in the course of this  
33 discussion, have we had, I know there was an element of, there was pay for  
34 performance piece, but I guess, in the course of conversation, was there anything  
35 articulated as to how we get a better sense of the outcomes of what we're doing within  
36 our employees? We've got the Montgomery Measures Up but was there a course, was  
37 there a discussion in the course of the negotiations as to how we tie those performance  
38 measures actually back to how we're doing, how each of our employees is doing so that  
39 we've got everyone kind of in alignment with the delivery of the services to our  
40 residents?

41  
42 Joe Adler,

43 We did negotiate a gain sharing pilot program that will start in July with MCGEO and  
44 that has, that's going to be an experimental program obviously but we will see whether





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1 that the front line employees will get together and make suggestions for improvement,  
2 and that will trickle down apparently to savings which will be shared both by the County  
3 and by the Bargaining Unit members that engage in that particular service.

4  
5 Councilmember Knapp,  
6 And so that's if an employee, or a group of employees identify a way to do something  
7 more efficiently.

8  
9 Joe Adler,  
10 Right.

11  
12 Councilmember Knapp,  
13 Then that, the percentage of whatever is --.

14  
15 Joe Adler,  
16 Saved.

17  
18 Councilmember Knapp,  
19 Saved, that they get a percentage of.

20  
21 Joe Adler,  
22 Yes.

23  
24 Councilmember Knapp,  
25 Okay.

26 But we didn't necessarily do anything that tied the actual performance measures to  
27 aligning our individual employees to the delivery of the services through the  
28 departments to our --.

29  
30 Joe Adler  
31 Frankly, that would be very, very difficult, and the time we have for negotiations, that is  
32 such a heavy laden and a quantitative process that would require much more analysis  
33 than we have during the time of bargaining. However, the administration is looking at a,  
34 kind of a, what I call MC staff, but it'll probably be named something different.

35  
36 Councilmember Knapp,  
37 Yeah.

38  
39 Joe Adler,  
40 Looking at the city staff program and the state staff program and see if we can start  
41 cascading it from management on down as to look at productivity but to actually engage  
42 in productivity negotiations, we just don't, we do not have the time frankly. I mean,  
43 there's so many other items on our table that that particular piece would take a year by  
44 itself just to trickle it every, and then it's if we negotiated, the other, we think that that,



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1 you know productivity improvement is a management prerogative. For us to engage in  
2 negotiations on that would either, perhaps either weaken that or go to arbitration and  
3 then arbitration as you know, in this County, is best offer. We could win it all, we could  
4 lose it all. So we have nothing in that kind of, that kind of productivity bargaining we  
5 have not done.

6  
7 Councilmember Knapp,

8 Well, that's something I think over the course of the last couple of years, it's been pretty  
9 clear sitting up here as we've talked, issues related to Clarksburg, pick your topic,  
10 where clearly the issue has resulted, problems have resulted because people have  
11 been very siloed in their perspective and how we've actually tried to deliver services.  
12 And at some point we're going to need to try and figure out how we get people to stick  
13 their heads out of the hole and look to either side to see how we as a County work  
14 better to deliver those services and obviously the people who are doing that are  
15 employees who are good folks but if we don't have the right pieces in place to align their  
16 interests so that we're all pulling in the same direction, there's no reason for them to  
17 want to do that because they're going to be focused on the things right in front of them.  
18 And so we, I would argue that we need to come up with a way to better do that and if it's  
19 going to take us a while then we need to start having that conversation, well, once we  
20 approve the contracts, we've got three years to figure it out. One final set of issues is,  
21 with the budget that we, or the budget recommendation that we received from the  
22 County Executive, we also received guidance that the issue of sustainability is the word  
23 that some of us like, some of us don't like, but that, what we, you know, but if you look  
24 on the out years, that there is a difficulty in sustaining the budgets that we have before  
25 us. And people then also try to link the compensation piece to the lack of sustainability.  
26 The question I would have is, this just didn't show up. Clearly, the projections that  
27 people are looking at and saying these are not sustainable, were numbers that were  
28 available especially across the street through the fall when the negotiations were  
29 occurring, so how did that issue as it relates to sustainability come up in the course of  
30 negotiations? Because clearly, that's the issue that we're wrestling with now is how to  
31 take all of the pieces that we've been given, and I guess I'm a little struck by the irony  
32 that on the one hand we're told we need to slow the rate of growth, and on the other  
33 hand, one of the biggest issues we're trying to wrestle with is how to assume the  
34 contracts which I'm very, I'm supportive of, but I'm just trying to figure out how that  
35 entered into the budget negotiation piece because that seems to be the crux of the, the  
36 crux of the issue.

37  
38 Alexandre Espinoza,

39 The County's fiscal condition is a factor in our considerations in our approach to  
40 bargaining. And, it's actually the, one of the factors that an impasse would consider in  
41 terms of deciding on an arbitration package whether or not the County's fiscal condition  
42 is such that the packages before the arbitrator is reasonable or not. So, you know, the  
43 long term forecasts that OMB does prepare in consultation with the Finance  
44 Department, that kind of information does, is a factor in consideration and during



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1 negotiations and we do try to, in terms of developing our strategy going in, try to  
2 forecast and try to anticipate future budget challenges in terms of packaging our own  
3 economic proposals and that's what we did in terms of the wage proposals and the  
4 wage packages we eventually agreed upon with the Bargaining Units.

5  
6 Council President Praisner,  
7 You're saying you didn't start there? You didn't start where we ended?

8  
9 Alexandre Espinoza,  
10 Correct.

11  
12 Council President Praisner,  
13 Right, right.

14  
15 Alexandre Espinoza,  
16 I mean, it's a give and take.

17  
18 Joe Adler  
19 Yes.

20  
21 Alexandre Espinoza,  
22 Throughout the entire process.

23  
24 Joe Adler  
25 Indeed, yes.

26  
27 Councilmember Trachtenberg,  
28 I think another important factor in all of this as well is the simple fact that when we  
29 negotiate these benefits, we've got an expectation, and we've made a commitment to  
30 employees and retirees, and I know in the course of the last few weeks, I've had  
31 dialogue with retired employees who have been very concerned about whether or not  
32 we can continue to honor what we have committed to. In other words, you know, that's  
33 again, another part of what has to be discussed and weighed through any of the  
34 bargaining that goes on, and I have been most interested in the fact as we have  
35 discussed retirement benefits and that GASB requirement that we've actually heard  
36 from County employees who are retired, who want to make sure that we're doing that.

37  
38 Council President Praisner,  
39 Remember, collective bargaining is about bargaining with current employees for current  
40 benefits.

41  
42 Councilmember Trachtenberg,  
43 Right.



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1 Council President Praisner,  
2 It's not about retirees, and that's another piece, and that's why I think what  
3 Councilmember Trachtenberg is saying about retirees coming forward and raising  
4 concerns or highlighting the concern that GASB raises is a separate issue from the  
5 Collective Bargaining Process as it relates to current retirees.

6  
7 Councilmember Trachtenberg  
8 Right.

9  
10 Council President Praisner  
11 Final question? You said Council Vice-President Knapp. Yes.

12  
13 Councilmember Knapp,  
14 Thank you Madame President.

15  
16 Councilmember Trachtenberg  
17 Did you say final?

18  
19 Council President Praisner,  
20 Yes, he said final.

21  
22 Councilmember Knapp,  
23 I did. I did.

24  
25 Council President Praisner,  
26 He said final to me.

27  
28 Councilmember Knapp,  
29 I did. I guess my final--.

30  
31 Council President Praisner,  
32 He said it to me too.

33  
34 Councilmember Knapp,  
35 My final remarks would be that we have very good employees, and I think, and we are  
36 only as good as the employees that we have, and we are in the service business and  
37 we need to retain and attract the best and compensation I think is a critical component  
38 of that and so I am supportive of our, of the agreements that have been negotiated. I  
39 guess the point I would encourage us to consider though as we look at the next couple  
40 of years is, we as, we like to say in Montgomery County that we're a great County, and  
41 it's an easy thing to say. It's a very difficult thing to actually be and to do and to  
42 maintain. And as individuals, I know many, many fine, great individuals work within  
43 County government. The challenge that I have struggled with is how we take those  
44 individuals and get those individuals to actually work as a part of a collective, as a team



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1 to ensure that what's being delivered to our residents is truly a great product, and if  
2 we're going to figure out how to achieve the greatness that we all talk about, we're going  
3 to have to come up with some ways to get that done and it's going to require us to have  
4 some very difficult conversations but I think that they will be very good and beneficial  
5 conversations for everyone at the end of the day, and so I would urge us to think about  
6 how we would do that. I don't disagree that it'll take us some time but when I look at the  
7 difficulties that we have at delivering services, it's because we have good folks, good  
8 individuals, but we haven't put a structure around them to allow them to be successful  
9 as a team or to even encourage or provide the incentives for them to be successful as a  
10 team and I think we've got to very seriously look at that. Especially as we look at the  
11 increasing demands that our residents have for the services that they're looking for in  
12 what is a great County. And so, it's not going to be easy, but I think we've got to start  
13 July 1 to figure out how we put that in place so we've actually got a framework when we  
14 get to our next negotiation to figure out how to proceed and get, and really begin to  
15 deliver on the promise that I think we all talk about. Thank you.

16  
17 Council President Praisner,

18 I'm going to call on Councilmember Andrews who has his light on, but I just want to say  
19 again, that it seems to me the question is we keep doing what we're doing now, we will,  
20 I believe, have the challenge of well compensated employees versus numbers of  
21 employees in the future or finding a way to restructure and look at both the Collective  
22 Bargaining Process, but also the issues of how we do things which is I think what  
23 Councilmember Knapp was referring to and how we organize people, and that's a piece  
24 that I hope in one small way, and I want to thank Mr. Wren for being so receptive to the  
25 issues of gain sharing, because as I've said over and over again, it's our employees  
26 who know best how to do things differently. Because they do it day in and day out. But  
27 we have to get past the silos, and the archaic structures that we have in place in order  
28 to unleash both that creativity but also that expertise. Councilmember Andrews.

29  
30 Councilmember Andrews,

31 Thank you, Madame President. It seems that we're combining six, seven, and eight.

32  
33 Council President Praisner,

34 Correct. I assume.

35  
36 Councilmember Andrews,

37 So I'm going to try to put my comments all together here. And I appreciate your  
38 comment, I appreciate the work of the MFP Committee in reviewing the compensation  
39 issues and I wanted to piggyback on your comment that there is a tension between how  
40 much you can pay current employees and how many new ones you can afford to add in  
41 the way of program. So that's best illustrated I think in the MCPS budget where the  
42 proposed increase is 137 million and of that 122 million is personnel benefits which  
43 means there's 15 million in there for new initiatives or other things and that is, you know,  
44 simply the way it is in terms of the tension between desire to add new initiatives and



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1 what you have available after you increase pay for current employees. So, that's, that  
2 has to be considered because to the extent that we have substantial increases in  
3 compensation for current employees we limit what we can do in the way of adding new  
4 positions, whether it's in police or fire or recreation or anywhere else, it's a limiting  
5 factor, and there's also of course the tension that we have to be aware of between how  
6 large the budget is and what the tax rate is and that's something that we have to  
7 balance as well here. I think the only fair summary of, well, I think the best indicator of  
8 how attractive an employer we are is that job applicants are beating down the door to  
9 work here and that's true for MCPS, it's true for fire rescue, it's true for police, it's true  
10 for almost any position. There are certainly some specialized positions in County  
11 government, some specialized positions in MCPS where there are exceptions. But the  
12 general rule is, job applicants, qualified job applicants are beating down the door to  
13 work here, and as Mr. Adler noted, our retention rate is excellent, outstanding, much  
14 better than the average, and that's good. We want a high retention rate. We want a high  
15 rate of qualified applicants to apply for positions so we have excellent choice. Another  
16 indicator of how the County is an excellent employer is how the County handled the  
17 recession in the early 90s when there were actually no increases in COLAs for three  
18 years in a row for a general weight adjustment and very tight budgets, cutbacks in  
19 services, but I believe no employees were laid off during that three-year period.

20  
21 Steve Farber

22 That is correct, Mr. Andrews.

23  
24 Councilmember Andrews,

25 Okay. So the County works hard, is a very humane employer, works to take care of its  
26 employees well, has instituted a lot of programs to help employees as we should. So  
27 that's sort of the context. I think that these increases will be difficult to sustain. We don't  
28 know exactly what will happen next year or the year after, but it doesn't look as good as  
29 this year. We know the state has a big structural deficit of one and a half to two billion  
30 dollars, and the state may decide to take out some of its pain on local governments  
31 including us. They've done that before. That could add to our troubles. We are at the  
32 maximum in terms of our local income tax rate, so we do not have a lot of room for  
33 growth. The main room for growth is in the property tax revenues if the County were to  
34 go above the charter limit, and that's not something I want to see happen. I'm not an  
35 absolutist on it, but I think that going above the Charter limit should be reserved for very  
36 unusual situations because I think the right public policy goal is to keep increases in the  
37 property tax rate to the rate of inflation which is what is accomplished by – at the  
38 Charter limit, since the property tax is a more aggressive tax than most of our other  
39 taxes. We have a variety of, we have a tax structure that we've made more progressive  
40 in the past few years by shifting some of the burden to the income tax and away from  
41 the property tax to the point now we're actually taking in more this year from the income  
42 tax than the property tax, and I think that's a good shift and the Council has done that, I  
43 think intentionally over the last several years. In terms of some of the specifics, I'm very





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1 pleased that the MFP Committee modified the proposal in the MCGEO agreement  
2 regarding the library volunteers. I thought it was a very --.

3  
4 Councilmember Trachtenberg  
5 That was done before the worksession.

6  
7 Councilmember Andrews,  
8 Good.

9  
10 Councilmember Trachtenberg  
11 We had the language right at our session.

12  
13 Councilmember Andrews,  
14 Good. I think it's important that volunteers be, continue to be used by the library system  
15 as they are now to help shelve books and so on. And I would not have wanted to see  
16 that disappear as would have happened under the proposed language that you adjusted  
17 so I appreciate your good efforts there. I want to comment on a provision that's part of  
18 the FOP agreement which I strongly disagree with and that is the decision of the  
19 arbitrator regarding discipline. This is a critical issue and I think the arbitrator got it very  
20 wrong. And the issue is, who has the final authority in deciding what the discipline is for  
21 police officers? Currently the Police Chief has that authority. He cannot impose  
22 discipline if a person is found to be innocent by the disciplinary board but if the  
23 disciplinary board finds the person has violated whatever the charges were, then the  
24 Police Chief has the option to go further than the disciplinary board in their  
25 recommendation. And the reason that is so important in the police department is that  
26 only police officers, police officers are in a unique situation with regard to public  
27 employees. It is critical that they have the confidence of the public. They have unique  
28 powers. They carry weapons. They can arrest people. It is imperative the public  
29 confidence in that, in the police be maintained and I think this is a blow against the  
30 accountability because the arbitrator has ruled against the County and has said that the  
31 Chief would not have the authority to go further than the disciplinary board in whatever  
32 discipline they recommend. Which means, as the County argued, that this removes the  
33 Chief's ability to overturn a Hearing Board decision that could result in the department  
34 being forced to retain an officer who has violated the law, thus eroding public  
35 confidence. Now, the arbitrator notes that binding arbitration is used in many other  
36 elements of labor negotiations, labor disputes, but I believe this is a unique situation, a  
37 unique agency in terms of the powers that police have and discipline and the public  
38 confidence that must be there, is so important in the role that the police have in our  
39 society and community. And I believe that this will, this certainly undermines the  
40 authority of the Chief of Police. And it may well lead to a erosion of confidence. I would  
41 not want an officer, I would be very uncomfortable if the Police Chief were  
42 uncomfortable with an officer on the force after going through the process. I think that's  
43 asking for trouble and I'm very troubled that the arbitrator made that conclusion. And I  
44 wanted to draw attention to it because I think it's a big change. This was a result of a





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1 change in state law that allowed this to be negotiated by the parties. They went to  
2 arbitration and the County lost. And I think the arbitrator's reasoning was fallacious in  
3 comparing this situation to other agencies and other areas of dispute within the police  
4 department. I want to emphasize how wrong I think that decision was and how I think it  
5 undermines the authority of the police chief and potentially public confidence in our  
6 department. With that said I will support these agreements with those caveats about the  
7 challenge to sustaining them and my noted disagreement with that provision and my  
8 commendations to the MFP Committee for modifying the provision regarding library  
9 volunteers.

10  
11 Council President Praisner,  
12 Councilmember Elrich and then Councilmember Floreen and then we'll see if  
13 Councilmember Trachtenberg has any comments. The votes that we will take are  
14 related to FOP and MCGEO. There are no other votes this morning. Councilmember  
15 Elrich.

16  
17 Councilmember Elrich,  
18 I appreciate the comments made by my colleagues about what I agree with are potential  
19 long term constraints on the budget. I also want to say I think there are reasons, you  
20 know, for going above the charter limits and I think that some of those reasons are  
21 fundamental and structural. A number of us, you know, made a lot of issue out of the  
22 lack of infrastructure in the County. The fact that, you know, we're building the first fire  
23 station since 1981. That we're serious, and some of us would say someday we'll be  
24 building the first fire station since 1981. And the fact that we're seriously deficient in the  
25 size of the police force given the amount of growth that's occurred in the County. And  
26 the fact that, you know, we can't get the school money we need for school construction  
27 and that we haven't been able to, you know, some would say build the roads but  
28 certainly not been able to do some of the things with transit that we've liked to do. A lot  
29 of those are purely infrastructural costs that the County's going to have to bear if it's  
30 going to get caught up and do the things it needs to do, but a lot of those things also  
31 come with personnel. You can't build a school without putting people in it to operate it.  
32 You're not going to build fire stations and police stations and libraries without putting  
33 people in them to operate it. So, a certain amount of, I think very necessary expansion  
34 of County government is going to happen and probably should happen. I think the real  
35 challenge then is the question of looking at what we're doing right now and getting out of  
36 the mentality that everything is additive and that we, that the core budget is off limits,  
37 that it seems that, you know, things don't come over with we think this is a better  
38 program than another program, we want to do this instead of that. Everything seems to  
39 be we want to do this. And we're not, there's no evaluation of what else we've been  
40 doing. We talk about stove pipes. At some point, the stove pipe discussion is going to  
41 get really, really old. You're there? Yeah. I'm approaching there already. I mean, we can  
42 say, we can talk about this all we want but at some point somebody has got to get rid of  
43 the stove pipes and if that means fewer positions when that's done, then that's okay  
44 because there are going to be other things that we need to do that are going to add



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1 positions to the County government but it seems to me that the effort certainly over the  
2 next year, and I've been told that a year is too short to expect dramatic results, so  
3 maybe a year or two, should be to really streamline and make the County operate  
4 better. I mean, we can all sit here and say it's great and that it's a wonderful place to  
5 work but at the end of the day if we're not delivering services in the most efficient way  
6 possible, that inefficiency is going to come dead up against our need to make  
7 expansions in certain areas and we're going to have a very difficult time sustaining both.  
8 So, from my point of view I want to continue to encourage the Executive to examine  
9 every nook and cranny and what it is we do and why we do it and be sure that we're not  
10 duplicating things. It's the issue that I looked at when I raised the issue about contracts  
11 this morning. I look at a lot of things that seem to have the same description on them  
12 and after a while you have got to wonder whether having ten people do the same thing  
13 is as efficient as having one person doing the same thing. If you're paying, if you're  
14 having other organizations doing it, paying ten groups that have ten Executive Directors  
15 and ten staffs, how much of the money and the resources is going to support basically  
16 administrative high-end expenses rather than actual service delivery and are there  
17 better models? So, I'll happily support what's before us now, but I really, you know,  
18 encourage people to look really hard at what we're doing right now because I think that  
19 we have got major, like the state, we're going to have major structural problems and  
20 we're going to inherit the state's problems. Because, I'm reasonably sure that next year  
21 when school construction is dropped to 200 to 250 million dollars and the County's  
22 share has dropped to about 30 million dollars, maybe 32, which is what, the cost of one-  
23 third of a high school? People are not going to say don't build any schools in  
24 Montgomery County or wait three years to build the next school. We're going to have  
25 major demands to find capital to build, you know, the school system we need to build  
26 and we're not going to be getting as much help from the state. So I, you know, I think  
27 we do face constraints in the future and I think that it would behoove us all if we acted  
28 like we face constraints.

29  
30 Council President Praisner,

31 I would encourage the Committees as I've identified earlier in my memo to the Council,  
32 excuse me, that as you review budgets identify the major ongoing, long term or base  
33 questions that you have that the Committees need to look at. Councilmember Floreen.

34  
35  
36 Councilmember Floreen,

37 Thank you Madame President. I just want, I wanted to comment that this is an  
38 expensive County in which to live. This is a demanding County to serve. And I am not  
39 particularly, of the belief that our residents are going to want fewer employees to serve  
40 them in the future or that we will be able to find efficiencies that will eliminate people,  
41 people, actually I think are the nature of our business. Public service involves  
42 communication, attention to detail and attention to people and that's costly. It's  
43 especially costly in a County where the cost of living is what it is, where the difficulty of  
44 movement is what it is and the time involved in service is as high as it is. These all



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1 contribute to enormous demands on employees and enormous costs to taxpayers and  
2 government and I respect that and I support the agreements that have been negotiated.  
3 The one thing is though, I wanted to piggyback on what Phil said with respect to the  
4 libraries. I was startled to see frankly, that there had been a side agreement calling for  
5 the phasing out of volunteers. I appreciate the need, I of all people appreciate the need  
6 to have sufficient support staff and operating staff in the libraries to serve the public and  
7 we tried sort of to get those positions in over time. Again, a challenge of the budget. But  
8 I was very startled to see that there had been a provision to phase out volunteers  
9 because I think that's one of the few environments in which we can engage the public to  
10 support services of various kinds to people, to engage families, to help folks access  
11 information and to provide the myriad of activities that do occur in our libraries today.  
12 So, I wanted to compliment the MFP Committee for reading that very carefully and  
13 getting the language adjusted appropriately. I think it is important and I just wanted to  
14 send the message. I hope we don't see more of that in the future. I think it's really  
15 important that we encourage a volunteer, a vibrant volunteer community particularly in  
16 the library situation but surely not to the detriment of long term staff. I think we need to  
17 increase both, not decrease either. Thanks.

18  
19 Council President Praisner,  
20 Okay, the Committee's actions and recommendations on the FOP and MCGEO  
21 contracts are before us for a vote but Committee Chair Trachtenberg wanted to make a  
22 couple of final comments before we vote.

23  
24 Councilmember Trachtenberg,  
25 Yeah, and I will be brief. For clarification purposes, I also want to underscore the fact  
26 that the salary schedules that the Committee recommended also include supporting  
27 funding for Park and Planning, funding for the College, for MCPS and for WSSC as well.  
28 And that is for a matter of public record. Okay, Mr. Faden.

29  
30 Mike Faden,  
31 Just to note that on the two contracts, what you are voting on are the two resolutions  
32 that are in your packet for today on circles L and N.

33  
34 Councilmember Trachtenberg  
35 Okay.

36  
37 Council President Praisner,  
38 Absent any requirement otherwise and unless there is a request by a Councilmember to  
39 separate them we will take one vote on both agreements. All in favor of the Committee  
40 recommendations related to the FOP and MCGEO contracts as reflected in the  
41 resolutions within our packets, please indicate by raising your right hand. It is  
42 unanimous. The Council is in recess downstairs for interviews of our appointees to the  
43 County Attorney, Chief Information Officer and Director of Office of Management and



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- 1 Budget. We will be back at 1:30. I would urge my colleagues to have their staffs get
- 2 lunch for them so that we can go into the interviews. Thank you.

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**TRANSCRIPT**  
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**MONTGOMERY COUNTY COUNCIL**

Councilmember Marilyn Praisner, President	Councilmember Michael Knapp, Vice-President
Councilmember Phil Andrews	Councilmember Roger Berliner
Councilmember Marc Elrich	Councilmember Valerie Ervin
Councilmember Nancy Floreen	Councilmember George Leventhal
Councilmember Duchy Trachtenberg	



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1 Council President Praisner,

2 Good afternoon ladies and gentlemen. This is a public hearing on a Resolution to adopt  
3 a Board of Health Regulation that would restrict the use of artificial trans fats in the  
4 County eating and drinking establishments. A Health and Human Services Committee  
5 worksession is tentatively scheduled for May 3rd at 2 p.m. Additional materials for the  
6 Council's consideration should be submitted by the close of business, Thursday, April  
7 26th. We have five speakers. Michael Jacobson, Center for Science and the Public  
8 Interest, Jeff Black, Melvin Thompson, Restaurant Association of Maryland, Kevin Fisk  
9 Food Products and Chip Berman, Outta the Way Cafe. If you would all join us at the  
10 table please. And Mr. Jacobson, you're first. Thank you very much. You don't have to sit  
11 in that order. You just need to be seated. Thank you. Mr. Jacobson, you're first. You  
12 have three minutes. And you need to push the button in front of you. Thank you.

13  
14 Michael Jacobson,

15 Good afternoon. I'm the Executive Director of the Center of Science in the Public  
16 Interest, a nonprofit health advocacy organization based in Washington. Among other  
17 things, CSPI led the effort to win passage of the law requiring nutritional labeling on  
18 packaged foods. I applaud Councilmember Trachtenberg for introducing a regulation  
19 that would largely eliminate artificial trans fat from County restaurants. This important  
20 regulation would help protect diners from a very significant cause of heart disease.  
21 Harvard School of Public Health researchers estimate that trans fat has been causing  
22 about 50,000 fatal heart attacks across the nation every year. Some of those deaths  
23 could be prevented by the measure being considered today. CSPI in 1993 first called on  
24 the Food and Drug Administration to require the trans fat content to be listed on food  
25 labels. The FDA's labeling regulations went into, was finalized in 2003 and that  
26 stimulated many manufacturers to begin using healthier oils. However restaurants have  
27 been slower to act. Still, some major chains and some smaller restaurants have greatly  
28 reduced the amount of trans fat in their products. Those include Marriott, Silver Diner  
29 and Blacks right here in Montgomery County. However, most restaurants have not  
30 changed their oils. The Restaurant Trade Association advocates voluntary programs  
31 instead of regulations. Unfortunately, a voluntary program probably wouldn't work well.  
32 New York City tried that approach for a whole year but concluded that few restaurants  
33 switched to healthier cooking oils. The Restaurant Association contends that there isn't  
34 enough trans fat free oil for the County's restaurants. But in fact, the marketplace is  
35 working. The pull of consumer demand has spurred companies to spur oil processors to  
36 spur seed developers to spur farmers to grow more crops whose oils could replace  
37 partially hydrogenated oil. We've seen skyrocketing acreages of low linolenic soybean  
38 oil, high oleic canola oil and others. While the whole restaurant industry could not  
39 change oils overnight, parts of the industry and parts of the country can easily change. If  
40 New York and Philadelphia restaurants are changing oils within 18 months and the  
41 entire Wendy's and KFC chains could change oils, certainly could restaurants in  
42 Montgomery County. After all, County restaurants use only one-sixth of one percent of  
43 the nation's shortenings and oils. Supplies of those ingredients will be entirely sufficient  
44 to meet the restaurants' needs. In conclusion, I urge the Council to fulfill its responsibility



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1 to protect the public's health by promptly getting artificial trans fat out of the County's  
2 restaurants. Thank you.

3  
4 Council President Praisner,  
5 Thank you very much. Jeff Black.

6  
7 Jeff Black,

8 Hi. My name is Jeff Black. I am the owner of Black Restaurant Group. We have three  
9 restaurants in Montgomery County. I am also a County resident and father of two, which  
10 is what really prompted me to start learning about trans fats. My restaurants have been  
11 as trans fat free as possible for the last couple of years once we started to learn about  
12 trans fats and the only time that trans fats make it into the restaurant is occasionally a  
13 supplier might substitute a product that we would catch and eradicate. But, I'm mostly  
14 here to speak about the impact on the industry. From my perspective and being a  
15 business owner in Montgomery County, there is an economic impact. However, that  
16 economic impact is completely mitigated by the simple fact that the damage trans fats  
17 can cause. It can lead to obesity in children, increased heart disease. I mean, the  
18 amount of hardship that could potentially be inflicted on people, there's just no reward. I  
19 know that there's going to be other people speaking with different perspectives from the  
20 industry and so on and so forth. But the reality of the situation is I don't think anyone in  
21 the room, and I might be speaking out of place, I don't believe anyone in this room is a  
22 pro trans fat person. The reality is they need to be eradicated. The ball needs to get  
23 started. We need to start moving the ball. This is, I think, very forward thinking  
24 leadership from the Council. I think it's very forward thinking from Montgomery County  
25 to be ahead of this issue and to set a tone. It will be quite some time before the rest of  
26 the country is trans fat free, but it will happen and the industry will adapt. The restaurant  
27 industry is, it's very adept at meeting the demands of the public. In this day and age,  
28 you know, things come and go, trends come and go. The advantage that I have as an  
29 independent and other independents in Montgomery County have, is it's much easier to  
30 change. I want to change my menu today, I go to my computer, I change the menu, I  
31 drop an item, I put it on tonight. The difficulty would be much more for the chain  
32 restaurants, the larger restaurants. And again I can't talk to that because I don't deal  
33 with restaurants on that level. But in terms of an independent, living in Montgomery  
34 County and working in Montgomery County, there's a, it's a very, the County  
35 government is very involved in running the government here and that's to be  
36 commended and I don't think this is an issue where the County is overstepping their  
37 bounds. I don't think it's an issue where the County government is imposing too much of  
38 a restriction. I think that--.

39  
40 Council President Praisner,  
41 Excuse me sir, but your time is up.

42  
43 Jeff Black,  
44 Oh, I'm sorry. Okay.





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Council President Praisner,  
Okay. Melvin Thompson.

Melvin Thompson,

Thank you very much Madame President and members of the Council. I'm Melvin Thompson. I represent the Restaurant Association of Maryland and I'd like to say that we support a gradual phase out of artificial trans fats with realistic timetables. We have met and spoke with Councilwoman Trachtenberg and also Councilman Leventhal. They've asked us to come up with some suggestions for maybe tweaking the language, which we did include in a packet of written testimony that we submitted to the Council. I just wanted to take a moment briefly to summarize some of the main points that we have with this proposal. This is a very complex issue that cannot be solved overnight. And the reasons are very simple. You know, when we're talking about trans fats, we're talking about trans fats in two things, frying oil, but we're also talking about trans fats in baked goods and desserts, a lot of those products that we acquire from outside suppliers. We don't make a lot of those products on site. We're also talking about boxed mixes and prepared batters that come to us ready to cook. Those products we have really no control over and it would be very difficult for us to replace those products with trans fat free versions. There are a lot of restaurants in the County that do not make everything from scratch like Mr. Black. They prepare a lot of their foods from manufactured products that are ready to cook. A lot of the french fries, onion rings, chicken nuggets, these things come coated, ready to fry. It would be very difficult for us to comply at that level. We have spoken with three major suppliers here in Maryland, Sabo Food Service, U.S. Food Service and SYSCO and they have told us flat out that of the products that they make available to restaurants that contain fats, less than 10% of those current products are totally trans fat free. U.S. Food Service told us point-blank that unless Montgomery County restaurants were willing to significantly change their menu, we simply wouldn't be able to supply them with the products that they're currently using if this regulation were to be approved. So, you know, we have a lot of restaurants that are going to be in that predicament. We also have a lot of restaurants that are a little bit worried about being at a competitive disadvantage. Their concern is that some of the larger chains will be able to lock into long term contracts with some of the suppliers and the smaller guy will be a little bit squeezed out. He is going to be at a competitive disadvantage because he's going to try to keep the same price points on his menu as the larger guy and he simply won't be able to, especially if some of the alternatives are going to be costing 15 to 20% more. You know, in New York City when they talked about regulating trans fats, the American Heart Association opposed it there. The American Heart Association continues to caution those against hastily banning because their concern is that we'll simply replace trans fats with saturated fats, especially if the supply simply is not there. At the state level, the Maryland General Assembly rejected a bill this year to ban trans fats but they asked the State Health Department to study the issue for a year and report back to the legislature by January of 2008. We look forward to seeing that report and we hope that this Council will also



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1 consider that report before moving forward. We're certainly happy that forward thinking  
2 companies are moving forward in this regard and are eliminating trans fats. We ask this  
3 Council to consider the realities of our business and work with us to achieve those  
4 solutions.

5  
6 Council President Praisner,  
7 Thank you.

8  
9 Melvin Thompson,  
10 Thank you.

11  
12 Council President Praisner,  
13 Mr. Fisk.

14  
15 Kevin Fisk,  
16 I'm Kevin Fisk.

17  
18 Council President Praisner,  
19 Excuse me Mr. Fisk, push the button. Thank you.

20  
21 Kevin Fisk,  
22 I'm Kevin Fisk, the Grocery Manufacturers Food Products Association. I represent the  
23 world's leading food, beverage and consumer product companies. Generally this bill  
24 does not, or this resolution does not directly affect us. It indirectly affects us. We, for the  
25 most part, many of our member companies have reformulated their products to  
26 eliminate or significantly reduce trans fats from those products and many of them you've  
27 seen on the store shelf. And in fact, McDonald's is another example of a chain  
28 restaurant who is eliminating trans fat from their fries. It took them about four years to  
29 come up with the recipe but they finally found the right mix of oils. We share the  
30 Council's concern about public health which is why so many of our member companies  
31 have gone through this reformulation process and continue to do so. Many of them  
32 started years ago, I'd say back in the early 90s. And they purchase oils that they use,  
33 the alternative oils, they purchase them in such bulk and over a time span, they get a  
34 three to five year contract to purchase these oils to make sure that there's going to be a  
35 supply. We buy in such numbers that we will have the supply. However, if we have  
36 created artificial demand for these healthier alternative oils that we rely upon that we're  
37 now facing pressure from other areas such as the restaurant industry, someone is going  
38 to come up short. There's a finite supply of oils. Farmers are racing to plant more  
39 canola, more low linolenic soybeans, problem is we're getting a push from the other side  
40 with the rush for corn, for ethanol. The price of corn is commanding a huge, huge price.  
41 There are a specific number of acres available to farmers. They're going to go with the  
42 crop that nets them the biggest price. So we're getting pushed up on that end as well.  
43 The other thing I'd like to mention is that we're taking some time to work with our seed  
44 oil companies, Monsanto, Pioneer, we have worked Iowa State to help them encourage



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1 farmers as well. Those companies are giving a price incentive to plant more of the low  
2 linolenic soybeans and the canola so we have got the healthier alternative oils. The  
3 approach that we have seen and that we'd like to see possibly considered here is more  
4 of a voluntary approach, a system set up for restaurants to consider going trans fat,  
5 developing an education program for not only restaurateurs but the general public as  
6 well to show them how necessary it is to reduce trans fats from their diets. And I guess  
7 I'm concluded there. Thanks very much.

8  
9 Council President Praisner,  
10 Thank you very much. Chip Berman.

11  
12 Chip Berman,  
13 My name is Chip Berman. I own the Outta the Way Café in Derwood. I live in Derwood.  
14 I love Derwood and it is a pleasure to be back before the Council again after a few  
15 years hiatus. I have written testimony that is essentially an invitation for any  
16 Councilmember to come into my business at any point in time to do any research that  
17 you need to do in order to effect good legislation. So, I'm not going to go ahead and  
18 read from it. In 1991 I was the first restaurant in Montgomery County to recycle. Here's  
19 the SORT award we received. We received it again in 2005 for recycling 69% of our  
20 solid waste. I have served on any number of environmentally concerned groups and I  
21 was Echo on the Appalachian trail when I was 17. So, I have a long history. We've been  
22 trans fat free for 17 years at the Outta the Way Cafe. We've been using seed canola oil  
23 for that long. 18 months ago we began a project at the café to build a new footprint for a  
24 new chain that is, one of the three legs as we call it is echo based. We have looked at a  
25 huge number of environmental efficiencies because small businesses are not going to  
26 be able to survive as entrepreneurial, especially diverse entrepreneurial entities if we  
27 legislate too quickly, if we cause bottom line hits too quickly and it's a little bit callous,  
28 but that's, you know, when Jeff says things come and go. Tommy is not here anymore.  
29 Linda is not here anymore. Peter is not here anymore. The Skaggs aren't here  
30 anymore. People come and go too. So what I'm here to do is to offer you the opportunity  
31 and from my own perspective gain resource from the County on the project that we're  
32 working on currently. I'm not going to share what we've learned in public testimony  
33 because we've done a lot of work on it. But privately, call me any time. Phil has my  
34 number. I will come. I will sit. I will talk. I'll do anything that you need to do, you need me  
35 to do to show you what it's like to be a small business person in Montgomery County  
36 and face these issues that are upcoming. I am convinced of the urgent need for green,  
37 as I said, I was green long before there was a green. I even looked green. You know,  
38 peace, love, okay. So I am in no way an opponent to any legislation, but as I think if you  
39 call Gail Ewing, former Councilman Ewing, who came to underage drinking from a polar  
40 opposite from me, Madame President, you will know that we crafted terrific legislation  
41 that is now a model in 49 other states for training in underage service. So, I'm here as a  
42 resource for the Council to effect good legislation. I believe I said in our meeting that my  
43 opinion is that when two sides start, truth is in the middle and truth is the basis for the  
44 most effective legislation. If I can't get the supply, I really don't know where to turn. Your



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1 responsibility, if you craft this legislation, will be to help me know what path to go down.  
2 Because, behind me, we have a diverse community of people who aren't as aware and  
3 simple inspection, simple enforcement, compounded by cultural language differences is  
4 going to be a big task. I'm here to help.

5  
6 Council President Praisner,  
7 Thank you Chip. It's good to see you again.

8  
9 Chip Berman,  
10 It's good to be back.

11  
12 Council President Praisner,  
13 Look forward to taking you up on your invitation.

14  
15 Chip Berman,  
16 Thank you very much.

17  
18 Council President Praisner,  
19 We do have a couple of lights before we move on to the next public hearing. So, I will  
20 call on Councilmember Trachtenberg first.

21  
22 Councilmember Trachtenberg,  
23 Thank you Madame President. I think my public opinion on this has been stated quite  
24 clearly that I consider this measure just to be a common sense measure that does  
25 nothing more than protect public health here in the County. And I certainly think we all  
26 know and would agree that there's enough evidence to suggest that the consumption of  
27 trans fat is definitely linked to both obesity and heart disease. So, I know we have no  
28 argument about that second item that I mentioned. The disagreement clearly is whether  
29 or not the County government has a role to play in this and as the Health Board and  
30 whether or not we can work with the community, the restaurants in particular to  
31 implement something that's effective and useful. I want to start by thanking colleagues  
32 who have sponsored this legislation with me and they would include Councilmembers  
33 Leventhal, who is the Chair of the HHS Committee, Councilmember Elrich,  
34 Councilmember Ervin, and Councilmember Knapp. And what I want to simply go to is  
35 the fact that this has been agreed to legislatively up in New York City. And they've got  
36 thousands of restaurants. And what I would suggest is that in many ways the diversity  
37 that's been referred to here about our community and about our restaurant business is  
38 typical of what exists up in the New York City area and I would note to colleagues that  
39 the issue around alternatives for preparation of food I know is one of those hot items  
40 that we'll be discussing within the HHS Committee. I have given to colleagues here  
41 today two items. One from a manufacturer, Whole Harvest and another which is a  
42 commentary that was prepared by Steven Joseph. I don't want to go into a great deal of  
43 detail but what I would suggest to you is that industry, different members of industry  
44 offer a different opinion than that expressed by several that spoke here today. And in



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1 terms of implementation of this health regulation again in conversations with folks like  
2 Melvin Thompson and Chip, we talked a little bit about working with the industry on that  
3 and perhaps writing an amendment to the initial draft of legislation that would suggest a  
4 one year implementation period around the preparation of food and either an 18-month  
5 or 24-month implementation around baked goods. So, I want to underscore the fact that  
6 it is our intent to work very clearly with the community and that is not just around  
7 implementation, but it's also around education and making sure that information around  
8 alternatives is fully understood by those in the community and I would underscore again  
9 at this point that there is support for this measure, not only in my opinion, widespread  
10 within the community, and most of what we've heard has been positive. But the  
11 American Medical Association, the American Diabetics Association, the APHA and the  
12 American Academy of Pediatrics, just to name a few, support this legislation. So I would  
13 bring us back in time to the conversation that we had many years ago around the  
14 smoking ban and the fact that that created in many ways, the same kind of controversy  
15 and I would suggest that we were a leader on that, that we were the first County to do  
16 that, that in time, the state has seen the wisdom of our ways, that it's something that's  
17 been implemented and clearly to the benefit of our community, but importantly, it also  
18 has not had a negative impact on our restaurant industry here in the County. So, I  
19 welcome the opportunity again to work with my colleagues and with those that are here  
20 today at the worksession that we have scheduled. I believe George, it's on May 4th or  
21 3rd. Okay.

22  
23 Council President Praisner,  
24 It's May 3rd.

25  
26 Councilmember Trachtenberg,  
27 And I would appreciate the opportunity to hear from all of you prior to that. So again, we  
28 can get a meeting of the minds on this, on the short end of things rather than on the  
29 long end.

30  
31 Council President Praisner,  
32 There are some other Councilmember lights. I would remind you this is a public hearing  
33 on the issue, not the worksession on the issue. We will deal with that when it is  
34 scheduled for Council action. We have several other public hearings as well.  
35 Councilmember Leventhal.

36  
37 Councilmember Leventhal,  
38 Thank you Madame President. Thank you Councilmember Trachtenberg for introducing  
39 this. We're all going to learn a lot about nutrition in the course of the next several weeks  
40 and that's a very useful exercise. Thank you to all the witnesses. Excellent testimony  
41 from all five of you. Very constructive and helpful. Let me just say Melvin Thompson,  
42 you did indeed give us what we asked for and we will be back to ask you for additional  
43 suggestions. I appreciate your very detailed testimony. It's very thorough and  
44 constructive. Amanda Mihill here has quite a task ahead of her. She's going to have to





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1 become a nutrition expert on top of all her many other areas of expertise in the next few  
2 weeks but we are going to count on her to walk us through some of these very serious  
3 points. I'm confident that we can work through them. I think that this is different from the  
4 smoking ban. There's obvious similarities. The smoking ban was a fairly bright line. I  
5 mean I came to the conclusion that we had to ban it under all circumstances in all  
6 establishments as of a fairly near date. And after much thought and listening I came to  
7 that conclusion. In the case of food products, there's many different types of food  
8 products as you've outlined. Some are, you know, prepackaged, some are imported  
9 from outside the County, some are made from scratch and so we'll work through those  
10 issues. And I'm confident we can come up with a good outcome. Amanda, I hope we will  
11 get as much information as we can from New York City, which is coping with these  
12 issues right now in real time. I want to welcome one of my heroes, Dr. Michael  
13 Jacobson, an extraordinary advocate, a real American hero. I don't think, I just can't say  
14 enough about the work that you've done to change industry and change this country  
15 and to get people focused on predatory marketing practices and really abuse of children  
16 and just change the entire dialogue. So much of what is now common knowledge in the  
17 media about nutrition and health and obesity comes from your work and the work of  
18 your organization. I always enjoy working with Margaret Wutan from CSPI and I'm just, I  
19 welcome you back to Rockville and just want to thank you for your leadership over  
20 many, many years. And Jeff Black, you're a terrific restaurateur and Chip, you make  
21 some excellent points. We look forward to working with you and I thank, and I just want  
22 to ask this question of Michael Jacobson actually, from Mr. Fisk's testimony. What do  
23 you think Dr. Jacobson, about this issue of establishments substituting saturated fats for  
24 trans fats?

25  
26 Michael Jacobson,  
27 Well so far, we haven't seen much of that. I think companies have done a real good job.  
28 Half of the partially hydrogenated oil is used for frying. You don't need a solid fat for  
29 frying. I don't know of any company that has switched to a solid fat. So, it's a red herring  
30 there. For baked goods, you do need a solid fat for many baked goods. Not all. And  
31 there, anything that companies switch to is a health improvement over partially  
32 hydrogenated oil. You know, some companies will have to use butter or palm or cotton  
33 seed oil --.

34  
35 Councilmember Leventhal,  
36 Could I stop you on those? I mean, because we're getting educated here? Okay. Palm  
37 oil an improvement over hydrogenated oils?

38  
39 Michael Jacobson,  
40 Everything is an improvement over hydrogenated oil, partially hydrogenated oils. Palm  
41 oil is a bit of an improvement. There's some ecological problems because much of it is  
42 obtained from Malaysia and Indonesia where they chop down rain forests and plant oil  
43 palm trees destroying the trees and the endangered species that live there. But partially  
44 hydrogenated oil, trans fat is the worst oil. The FDA Advisory Committee in 2004



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1 concluded that trans fat is worse than saturated fat, the problem in butter or palm oil.  
2 Palm oil and butter aren't good, what some companies are doing, I think Kraft with Oreo  
3 cookies is mixing some palm oil with some cottonseed oil or canola oil. And that  
4 provides a sufficiently hard oil for when you need a solid fat. And when you think about,  
5 you know we hear, oh, you know, these foods, it's impossible to replace partially  
6 hydrogenated oil. Partially hydrogenated oil has only been used for 100 years. For the  
7 millennia before then, people survived without partially hydrogenated oil using chicken  
8 fat or lard or beef fat instead. So, we'll manage quite well without partially hydrogenated  
9 oil and any cost, there's controversy about the costs to restaurants. Some restaurants  
10 say it's costing them some more, a little bit more. Some restaurants say it's a wash. The  
11 new oils are more expensive but they last longer. And so there's some controversy  
12 here. But any additional cost, we're talking pennies, you know, what do oil, shortening  
13 costs amount to in a restaurant? One percent, 2 percent of the costs. It's nothing. So, if  
14 the costs go up a little, you know, maybe, but we're protecting the public's health. You  
15 don't see the heart attack. The heart attacks don't come labeled with a little partially  
16 hydrogenated oil label but some of them are being caused by that. It's kind of invisible  
17 damage but we have to keep that in mind. And for every month of delay, more people  
18 will be developing heart disease, suffering heart attacks.

19  
20 Councilmember Leventhal,

21 Great. I see that Dr. Tillman has come in, we are about to give her her budget later on,  
22 shortly.

23  
24 Council President Praisner,  
25 --shortly if we can.

26  
27 Councilmember Leventhal,

28 And when we get to the Committee's worksession we will want Dr. Tillman's views on  
29 this legislation and particularly any challenges with respect to enforceability and issues  
30 that we should be looking at. And the last thing I would say to my friend Duchy  
31 Trachtenberg is, I am looking forward to tackling these issues. I think we'll have an  
32 excellent conversation on May 3rd. It is possible we won't conclude our work on May  
33 3rd. There's a lot of moving parts in the restaurant industry and in the different foods for  
34 sale. So, I'm very open to a real conversation, really considering consequences and  
35 outcomes and if we don't wrap up in one worksession, it may take more than one.

36  
37 Council President Praisner,  
38 Councilmember Berliner.

39  
40 Councilmember Berliner,

41 Mr. Thompson, I was wondering if you could respond, and I wasn't here for your  
42 testimony although I was listening to it downstairs.

43  
44 Melvin Thompson,





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1 Sure.

2  
3 Councilmember Berliner,

4 I may have missed some. To, the argument that has obviously been raised, that if New  
5 York City could do it, I'm sorry, Montgomery County needs to be concerned about  
6 what? There is no city in the world probably that has more restaurants than New York  
7 City and certainly more small businesses, large businesses, every type of business. So,  
8 talk to me as to, given that this has been done there and people, maybe you have  
9 evidence that people have gone out of business as a result of it or some consequences  
10 but I need to understand why it is that this measure is of such grave concern given the  
11 action of New York City.

12  
13 Melvin Thompson,

14 Yes sir. That's a very valid question. Let me clarify. There are actually two jurisdictions.  
15 One is New York City and the other is Philadelphia. But I think since New York City was  
16 first you didn't hear much about Philadelphia. In New York City they are actually going  
17 about it in two phases. They realize that there are far more challenges with things like  
18 baked goods and partially hydrogenated and other products and they have included  
19 some of these challenges by really having two effective dates. The first date is for frying  
20 oil and spreads only. That will take effect in July of this year, this summer.

21  
22 Councilmember Berliner,

23 And that was after what period of time?

24  
25 Melvin Thompson,

26 I'm sorry?

27  
28 Councilmember Berliner,

29 How long was the pause if you will between enactment and when it went into effect in  
30 New York City?

31  
32 Melvin Thompson,

33 Oh, in New York City it actually passed back in December. So the industry has had  
34 since early December in order to respond. So they're banning it in frying oils and  
35 spreads first. And then in July of 2008, the ban will apply for baked goods and other  
36 products. And you know, companies like KFC, for example, they too have taken this  
37 approach. They found that it's far easier to replace the product in frying oil which is why  
38 they're replacing it and for their fried chicken but they have yet to find suitable  
39 replacements for things like their macaroni and cheese, their potpies, their biscuits and  
40 these other types of foods. And Philadelphia has done the exact same thing. For frying  
41 oil, the ban will take effect in September of this year. For baked goods and other  
42 products that may contain partially hydrogenated, the ban won't take effect until  
43 September of 2008. So, while New York City and Philadelphia have both approved their  
44 bans, we really haven't seen the practical side of it yet. Because neither has really taken



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1 effect. So, I think there could be compliance issues that perhaps we can learn from  
2 when those jurisdictions actually start enforcing the bans.

3  
4 Councilmember Berliner,  
5 But I take it then that you, I was not privy to the document that my colleagues have  
6 received apparently with respect to your phasing in. Maybe it's part of your testimony.

7  
8 Melvin Thompson,  
9 Yes I did include that in testimony.

10  
11 Councilmember Berliner,  
12 Is it fair to say then without looking at it in this moment that if Montgomery County were  
13 to adopt the same phasing as New York City and Philadelphia that you would be  
14 supportive of this legislation?

15  
16 Melvin Thompson,  
17 Well, I wouldn't say the exact same phase in dates because what we would like to see  
18 is--.

19  
20 Councilmember Berliner,  
21 Same phase in period of time?

22  
23 Melvin Thompson,  
24 Same phase in period of time. I mean, I would like to see something a little along the  
25 lines of July 2009. That will give us a full year to see what happens in New York City  
26 before Montgomery County jumps on board. That would be our recommendation.

27  
28 Councilmember Berliner,  
29 And Mr. Jacobson, do I appreciate that you recognize that there is a distinction between  
30 frying and baked goods and does that kind of phase in give you heartburn if you will.

31  
32 Michael Jacobson,  
33 No, it makes sense. Bakers have more difficulties. About a year ago, we criticized, we  
34 analyzed the foods fried at the Department of Agriculture, HHS and major hospitals  
35 around the country. It hit the headlines. USDA had about the worst fat. They changed  
36 overnight. Frying oils are easy. Baked goods take more experimentation. It's reasonable  
37 to have something along the lines of New York City, six months or seven months for  
38 fried foods and 18 months for baked foods and doughnuts.

39  
40 Councilmember Berliner,  
41 Mr., I'm sorry, Mr. Thompson, back to you for a moment please.

42  
43 Melvin Thompson,  
44 Yes sir.



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Councilmember Berliner,

Your testimony makes some allusion with respect to costs increasing and we've heard testimony here today that we're talking about a very deminimus cost. Do you dispute the numbers that have been suggested that we are talking about a one to two percent kind of item here that should not give, I hate using the expression, people heartburn but it seems appropriate.

Melvin Thompson,

Right. And certainly, no pun intended. Yeah, actually.

Melvin Thompson,

That's actually debatable and the reason is this. You know, we've seen on record that Silver Diner has estimated that it's cost them about 15% more to bring in some of their alternative products that they're using. I believe that was the reference in the newspaper article that ran in the Post. But what we're concerned about are some of the unforeseen increases as bans like New York City, possibly Montgomery County, and Philadelphia creates an artificial demand, there's going to be a reduction in supply. And when we consider the reduction in supply, that always is going to drive prices up. And as Mr. Fisk alluded to, the larger companies are going to be at an economic advantage because they can lock into longer term contracts at lower prices and the smaller guy is going to be left out. That's our concern.

Councilmember Berliner,

Let me hear from the smaller guy for a moment. Did I, do I understand your testimony before us to be that as a small entrepreneur you find this kind of regulatory approach to be too onerous and inappropriate?

Chip Berman

I have here, you may remember this.

Council President Praisner,

Yes I do.

Chip Berman,

This was 1991, and it was a piece that analyzed operating costs in the business and the impact of legislation. We are, as small business people, our, I have not recovered from the smoking ban. I lost \$80,000 in income and while I was supportive of it, I did not actively lobby for it. I stayed out of the issue. That \$80,000, I don't get back. If you tell me it's going to cost one or two percent a point increase, well I operate off of point increase. The average profitability in Maryland for restaurants was three and a half percent, four percent.

Melvin Thompson



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1 It's four percent.

2  
3 Chip Berman,  
4 Anywhere between four and six percent.

5  
6 Councilmember Berliner,  
7 I thought you said you'll be able to recover that from your customers. I don't presume  
8 that you're going to eat those costs. Why do you, I'm sorry – eat these costs and have  
9 heartburn, I know in one--.

10  
11 Chip Berman  
12 Not heartburn.

13  
14 Councilmember Berliner,  
15 But why is it that you would be required to eat these costs in a context in which the  
16 entire industry is, if you will, being asked to assume higher costs as a function of this?  
17 Why doesn't the consumer end up paying higher costs as a function of that you have to  
18 raise your, the price of product by a nickel or whatever it is as a function of this?

19  
20 Chip Berman,  
21 Much as in your business, the business of politics, my customers vote with their feet.

22  
23 Councilmember Berliner,  
24 But if they can't go some place else.

25  
26 Chip Berman,  
27 Please.

28  
29 Councilmember Berliner,  
30 Okay. I apologize, I'm just trying to understand.

31  
32 Chip Berman,  
33 The competitive environment in Montgomery County is dramatically different over the  
34 last five or six years as multiple licensing has come in. As small entrepreneurs we're  
35 only beginning to feel the impact of that. Remember, I've been on canola oil for 17  
36 years. I come early to this debate and responsibly to this debate. My fear is that, as  
37 larger companies lock in supplies, I won't be able to get canola. If the Bill is punitive in  
38 nature and I can't get canola, what exactly am I going to use? I don't have an answer for  
39 that. I'll be going back to the future. If it also costs me, on the flipside if I continue to use  
40 canola, if I can get it say from U.S. Foods, and the price goes up 15, 20, or 30%, you  
41 have to look, this is an upside down pyramid. Large companies like ConAgra now are  
42 just beginning to apply agro technology to the manufacture of plastics and chemicals.  
43 That means that soy, corn, other products like these are going to have price changes  
44 that we can't even begin to understand at my level which is the micro-level. I know the



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1 price of corn has gone up 50% in the last year because of the move to ethanol. I know  
2 that that's going to reflect in feed costs. That means that my chicken costs are going to  
3 go up. I don't understand, I can't understand at this level, the micro-level truly what the  
4 impact is going to be. But I can say that if you're talking about pennies here or there, I  
5 live on pennies here or there. And privately, I'm more than willing to open my books and  
6 show you where the pennies are which would probably give you heartburn with all due  
7 respect.

8  
9 Councilmember Berliner,  
10 Thank you Madame President.

11  
12 Council President Praisner,  
13 Councilmember Floreen.

14  
15 Councilmember Floreen,  
16 Thank you Madame chair. Thank you Ms. Trachtenberg for bringing this interesting  
17 debate to our doorstep here. I want to welcome Jeff Black who operates a very  
18 successful Black Market in Garrett Park as well as a couple of other really nice places  
19 I've been to.

20  
21 Jeff Black,  
22 Thank you.

23  
24 Councilmember Floreen,  
25 Roger asked the question I was going to ask of Chip respect to the small business  
26 situation, so I would urge that the Committee pay close attention to that particular issue.  
27 Obviously, New York and Philadelphia have found a way, I remember reading when that  
28 was first enacted. My daughter lives in New York and actually she is quite exercised  
29 about the situation but I guess she'll get over it. That there was a concern about  
30 different ethnic groups and their ability to adapt to the needs. So that's another concern  
31 that I would ask that be looked at when the Committee takes this up. There has been no  
32 conversation here about enforcement either. I assume we're going to have to mean  
33 what we say. I think I just heard that Howard enacted, I think it was Howard County, that  
34 adopted a program where they are giving sort of a seal of approval to various  
35 restaurants.

36  
37 Councilmember Trachtenberg  
38 Yeah, yeah.

39  
40 Councilmember Floreen,  
41 And I don't believe it addresses the trans fat issue.

42  
43 Unidentified  
44 It does.



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1  
2 Councilmember Floreen,  
3 It does? So there are different mech -- I don't believe it's mandatory though.

4  
5 Melvin Thompson,  
6 No, Howard County is voluntary. Baltimore city is doing the same thing where the  
7 Health Department will promote on their website restaurants that go trans fat free. It's  
8 part of the Howard healthy initiative. And they'll get a little special seal on the front door  
9 to indicate to consumers that this is a healthy restaurant and they're also trans fat free.

10  
11 Councilmember Floreen,  
12 Thank you, Mr. Thompson. Well I guess I would, we haven't had any commentary from  
13 the County Executive on the subject. But at least with respect to how this would be  
14 enforced, it would be helpful to make it a part of the package that you all take up. Maybe  
15 we will all have to make regular visits to all our County restaurants which I'm sure the  
16 industry would appreciate. And I have got to ask my question because I've been  
17 worrying about this ever since this was introduced. What does this mean for the Krispy  
18 Kremes of the world? Do we know how they are adjusting in New York City? I know  
19 they have a branch there. I don't know if they have a sit down place the way they do  
20 here?

21  
22 Unidentified  
23 No, they don't.

24  
25 Councilmember Floreen,  
26 Do you know Mr. Thompson?

27  
28 Melvin Thompson,  
29 I do know that Krispy Kreme has introduced a --.

30  
31 Councilmember Floreen,  
32 It can't be good for you.

33  
34 Melvin Thompson,  
35 No, it's not.

36  
37 Councilmember Floreen,  
38 But it's so delicious.

39  
40 Melvin Thompson,  
41 But I think a couple of months ago they introduced a new whole wheat doughnut. I have  
42 not tasted it. I don't know how it would taste. But, there are some challenges there. We  
43 won't know what's happening in New York until it actually happens but I can tell you that  
44 the industry as a whole is kind of using New York City as a benchmark and they are



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1 very concerned about any ban that comes online before New York takes effect. So, we  
2 will just have to wait and see on that.

3  
4 Councilmember Floreen,  
5 Have they promulgated new, any follow-up regulations or anything of that nature with  
6 respect to the ban that they've enacted?

7  
8 Melvin Thompson,  
9 No, they're still on schedule for July 1st for spreads and oils and July 1st of 2008 for  
10 baked goods and other products that contain partially hydrogenated.

11  
12 Councilmember Floreen,  
13 Okay. Well, thank you very much.

14  
15 Council President Praisner,  
16 Councilmember Andrews.

17  
18 Councilmember Andrews,  
19 Thanks. Thank you very much, everybody. It was good testimony. Very specific, very  
20 helpful. Chip, congratulations on your first 25 years. I hope you have another 25. You're  
21 a community institution and a hangout for all Pittsburgh Steeler fans in the area.  
22 (laughter).

23  
24 Council President Praisner,  
25 In 15 minutes another Committee meeting is going to start.

26  
27 Chip Berman  
28 Now all of you know what it's like to own a restaurant.

29  
30 Council President Praisner,  
31 So, can we move along please. I'm sorry.

32  
33 Councilmember Andrews,  
34 Yes.

35  
36 Council President Praisner,  
37 But if you could ask any questions.

38  
39 Councilmember Andrews,  
40 Right. Well I wanted to just note a couple of things. First thank Councilmember  
41 Trachtenberg for her initiative. This is important. It will, it is important for public health.  
42 It's also important as we've heard, that it be implemented carefully so that it can be  
43 done in a way that doesn't have unintended consequences in terms of supply issues  
44 which are different. And I was just going to comment on, as the lead sponsor of the





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1 smoke, well there are quite a few differences here. And real quick, one is that the  
2 primary focus of that was to protect employee health and to protect people from other  
3 people, from smokers. Another difference is the, really, speed in which it can be  
4 implemented. One can cut off smoking immediately. There's no supply issue of oil or  
5 choice of product there that can have an impact here. Enforcement is easier with a  
6 smoke free law because it's visible. And so enforcement is something that we'll need to  
7 talk about in terms of how it will be monitored. And so there are some differences. I  
8 mean, I think that we can't learn yet from the experience of New York and Philadelphia.  
9 They don't have any. So, we have to anticipate what the issues are that may have been  
10 anticipated there as well. And I think another Committee will develop a reasonable  
11 approach to phase it in. As Michael Jacobson indicated, there are differences between  
12 fried, replacements for frying and replacements for baking that are more challenging in  
13 the baking area. So your testimony though was excellent. Really specific. And it's a  
14 good model for all those other folks who are coming for us. And for the record, I'm not a  
15 Pittsburgh Steeler fan. I just noted for the record that it's a Pittsburgh Steeler hangout. (  
16 laughter ).

17  
18 Council President Praisner,  
19 Further questions. Councilmember Trachtenberg.

20  
21 Councilmember Trachtenberg,  
22 Yeah, I actually just wanted to close by thanking again my colleagues for a great  
23 conversation here this afternoon. But I also want to thank all of you that came to testify  
24 on both sides of the issue. Again, I'm confident that we can work out, tweak what we  
25 need to tweak in the weeks and months ahead and I would note that in New York City,  
26 one of the things they have engaged the community on, the array of issues, and they  
27 have been discussing them in a forum fashion and they have been talking now about  
28 the preparation of baked goods and I know they have had some rather heated public  
29 discussions. I understand from a colleague about doughnuts in particular. So, I thought  
30 that would be of interest to perhaps some of my colleagues that we don't want to  
31 remove doughnuts necessarily from people's diet, their daily diet. But again, I think there  
32 are ways to work on this and work on it collectively and clearly in the interest of the  
33 public health. So I thank all of you for coming here today. And I thank my colleagues as  
34 well for a good conversation.

35  
36 Council President Praisner,  
37 I want to add my thanks as well and also Amanda, to ask you to make sure that we get  
38 a fiscal impact statement. I know this isn't legislation and normally that's reserved for  
39 legislation but given the resolution, we will need for the Committee's worksession on  
40 May 3rd, an impact statement from the Executive. And also I can't resist commenting  
41 that since this legislation resolution deals with eating and drinking establishments,  
42 impacts are very individualized to individual eating and drinking establishments as I  
43 think Chip has indicated and I appreciate very much the small business perspective. My  
44 other comment though is one could argue that the real problem is what you buy at the



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1 grocery store, not for the restaurant that you go to. So the challenge is, if you eat at  
2 home, this isn't going to improve your condition any one bit unless you change your  
3 behavior in your home as well. Thank you all very much. Good afternoon ladies and  
4 gentlemen. This is a public hearing on a supplemental appropriation to the Department  
5 of Health and Human Services FY07 Operating Budget for Under One Roof Integrating  
6 Community-Based Mental Health and Substance Abuse Services with the Somatic  
7 Services Grant in the amount of \$491,860. A Health and Human Services Committee  
8 worksession is scheduled for this afternoon at 2 p.m. Well, it will be after 2 p.m. The  
9 record will close at the conclusion of the hearing. There are no speakers for this hearing  
10 so the Committee meeting can take place, Mr. Leventhal. Good afternoon ladies and  
11 gentlemen. This is a public hearing on a supplemental appropriation, excuse me folks, if  
12 you could leave quietly, please we are still conducting Hearings. A supplemental  
13 appropriation to the FY07 Operating Budget of the Arts and Humanities Council, Non-  
14 Departmental Account for the Waters House Barn Adaptive Restoration. Folks, if you  
15 could please leave quietly. Nancy, if you could help me in getting folks to leave quietly,  
16 I'd appreciate it. This is \$100,000 for Waters House Barn Adaptive Restoration. Health  
17 and Human Services Committee worksession is tentatively scheduled for April 27th at  
18 9:30 a.m. The record will close at the conclusion of the hearing. Before beginning your  
19 presentation please state your name clearly for the record. We have three speakers.  
20 Mary Kay Harper for Montgomery County Historical Society, Kelly Goff, Conference and  
21 Visitors Bureau and Peggy Erickson, Heritage Montgomery. Mary Kay, you're first. No,  
22 you just shut it off.

23  
24 Mary Kay Harper,  
25 I'm Mary Kay Harper the Director of the Montgomery County Historical Society. I'm  
26 testifying today in support of the supplemental funding request of \$100,000 to undertake  
27 a feasibility and design study of the Waters House --.

28  
29 Council President Praisner,  
30 I'm sorry Mary Kay, if you could just stop. Folks, if you could enter the room quietly or  
31 wait for the Committee meeting which has not started as yet, I would appreciate it so  
32 that we can hear Mary Kay who happens to have a very gentle voice.

33  
34 Mary Kay Harper,  
35 And I should talk louder.

36  
37 Council President Praisner,  
38 Please.

39  
40 Mary Kay Harper,  
41 So this is for the Waters House Barn in Germantown. The Society is partnering with  
42 several County public and private organizations to convert the barn to a visitor and  
43 exhibit center for the growing Up County area. The need to undertake these studies has  
44 become very urgent since the public schools have announced that it will begin



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1 construction of an elementary school this summer that's going to open in August of '09.  
2 Now the reason for this urgency is that the school is immediately adjacent to the  
3 property and we will share a driveway and parking and it may also be very possible for  
4 us to share the geothermal heating and cooling system that they will have. The  
5 organizations involved in the project are the Society, the Park and Planning  
6 Commission, the Conference and Visitors Bureau, the Arts and Humanities Council, the  
7 Heritage Tourism Alliance and the Montgomery County Public Schools. The Waters  
8 property is located in the Milestone development in Germantown near Father Hurley  
9 Boulevard and 270. The property was acquired by Park and Planning in the 1990s. The  
10 Historical Society agreed to become a lessee of the property and assisted Park and  
11 Planning with bringing the house up to code for public use. The Society envisioned that  
12 always the barn would be a center for history education with an extensive exhibit on  
13 County history. But the funding was not sufficient to proceed except for installing utilities  
14 and a fire and security system. In 2002 the Society opened the history resource center  
15 in the house. The center includes small exhibit galleries, a research library, and offices  
16 for small historical organizations. As planned, the Waters House Barn will be renovated  
17 to include a County visitors' center and a large exhibit area on County history on the first  
18 floor. The basement level will include collection storage for other local historical  
19 organizations and a community meeting room. Renovating the barn will be truly a win,  
20 win solution. All the organizations will be able to utilize this historic property in ways that  
21 involve the community on many different levels. There will be an easily accessible  
22 visitor's center that has an added attraction of being in a historic building. There will be  
23 a place to introduce visitors to the heritage areas in the County. The public schools will  
24 be able to take advantage of the historic structures and landscape next door to the  
25 school. There will be a place for the history exhibit on County history. And we will be all  
26 able to take advantage of the green components that they are developing in the new  
27 school. Thank you.

28  
29 Council President Praisner,  
30 Thank you very much. Kelly.

31  
32 Kelly Goff,

33 Good afternoon. I'm Kelly Goff. I'm the Director of the Conference and Visitors Bureau  
34 here in Montgomery County, Maryland and my typed testimony is coming around to you  
35 now. I'm here to testify in support of the \$100,000 supplemental request which will be  
36 used to Commission a study, a feasibility study and a design study for new use of the  
37 Waters House Barn in Germantown. When the Up County Regional Services Center  
38 opened in the early 1990s, our organization, the Conference and Visitors Bureau,  
39 moved in and opened a visitor center on the first floor of the Up County Center. Since  
40 that time in the early '90s, we all know there's been a significant amount of commercial  
41 and residential development along Meadowbrook Road which is causing some  
42 accessibility and parking challenges for visitors to our visitor center at that site. The  
43 proposed renovation of the Waters House Barn for use as an interpretation center and  
44 visitor center is an ideal partnership of all the partners Mary Kay just mentioned. The



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1 location is accessible for individual travelers. But in addition could accommodate the  
2 group travelers transporting by motor coach to and through Montgomery County. This  
3 project would provide a convenient location for us to showcase the history of  
4 Montgomery County. Our local residents and our visitors would be provided a  
5 centralized place to come and receive a broad overview of our County. Thank you for  
6 considering the request.

7  
8 Council President Praisner,  
9 Peggy.

10  
11 Peggy Erickson,  
12 Peggy Erickson, Executive Director of Heritage Tours. I'd like to thank Mary Kay for  
13 having the vision to have water, sewer and have this barn sprinkled. That gets us  
14 halfway there. Maybe not half. But it gets us there. This is an alignment of planets that  
15 has really worked out very well. Montgomery County Schools started to survey the site.  
16 I knew Kelly was looking for land. We had this beautiful barn. We got a little group  
17 together and George, you're going to be so thrilled with this. We're hoping that we can  
18 meet green standards on this building. That we can do geothermal. That, you know,  
19 working with the HPC we could perhaps put solar panels in. The timing works perfectly.  
20 We have met with the parents, we got involved early enough that we were able to work  
21 with the community on the design standards for the school. The nice thing is there is  
22 federal money, the transportation enhancement funds pay for visitor's center. So, this  
23 \$100,000 supplemental sets us on our way to do a business plan that tells us, one, what  
24 the utilities will cost. Which, you know, you're talking about heating a barn, this is the  
25 ultimate barn. So, we need to look at staffing issues, heating, that's why the geothermal  
26 has a lot of appeal to us. So, this \$100,000 sets us on the way to go for a transportation  
27 enhancement fund grant and we're on a very fast track. Those grants are due in  
28 January. We've talked to Park and Planning about having the grant writer help us  
29 prepare the grant. So we will go forward with the study, the business plan and the  
30 concept design. A number of architects have already expressed interest in the plan. So  
31 it solves a number of problems. There's a proliferation of requests for funding for small  
32 museums in the Up County. This would perhaps pull us all together. Again, that, you  
33 know, that we qualify for federal money, that the school system is a willing partner in  
34 this and actually has said that we can work into their transportation study on the  
35 projected transportation impact. We're good to go. I've included pictures for you to see  
36 the site. Regardless of what happens the site is going to need work because it's, you  
37 can see the loafing sheds and the barn next to the elementary school. It's going to be a  
38 very attractive nuisance. So we need to do something. And this is seven-tenths of a mile  
39 off 270. Kelly's current visitor's center is eight-tenths of a mile off 270. It puts it a little  
40 closer. It solves a number of problems. And the partnership I think is amazing so we're  
41 very excited and we hope you'll support this supplemental.

42  
43 Council President Praisner,  
44 Thank you. Councilmember Floreen.



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Councilmember Floreen,

Thank you. It looks like a lovely idea. I guess my question for you is, is your thought that this would be up and running by the time the school is constructed?

Mary Kay Harper,

Actually, no. I don't believe so. But the problem, the urgency for getting the design and feasibility study done is so that we can hook into, to see if it's really feasible to use their geothermal system and to have the wells done at the same time and to be planning the parking and the driveway so that we're not doing all that road work and curb in opposition to each other. So, if we have the plan, then we will know and the schools will know and we can work together on it. But first we have to have a plan.

Councilmember Floreen,

This indicates that it's already hooked up to things. Water, sewer.

Mary Kay Harper,

It's hooked up to the utilities and that's it. I mean, there's no roads in there yet just the curb cut.

Councilmember Floreen,

Right, right. But it already has utilities?

Mary Kay Harper,

It has utilities.

Councilmember Floreen,

And that's, the geothermal element would be a heating element?

Mary Kay Harper,

Heating and cooling, yes.

Councilmember Floreen,

But it would be a, I'm guessing a rather significant project once you get past the design.

Council President Praisner,

Well, but I think the school system is already planning geothermal for the school.

Councilmember Floreen,

I don't mean that Ms. Praisner.

Council President Praisner,

Oh okay.



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1 Councilmember Floreen,  
2 It's the project itself.

3  
4 Mary Kay Harper,  
5 The project itself, what did we, we have an estimate of around \$2 million and the federal  
6 money, is available for that.

7  
8 Councilmember Floreen,  
9 Two million?

10  
11 Mary Kay Harper,  
12 They've already spent that much in Frederick and we can use the property which is  
13 worth quite a lot, 1.5 Peggy, to match.

14  
15 Peggy Erickson,  
16 You can do a soft match with what you have in hand. So we're hoping that the federal  
17 money, the state has been out and looked at the property. They were very excited. They  
18 were equally excited at the concept of a green visitor's center for a project. You know,  
19 we will be the first green visitor's center in the state and they liked that. The 2 million  
20 was an estimate Nancy. We, you know we.

21  
22 Councilmember Floreen,  
23 Yeah. Oh, I know. You don't know until you've designed it, right.

24  
25 Peggy Erickson,  
26 Yeah.

27  
28 Councilmember Floreen,  
29 I don't doubt that, but my point is there's more money that will be required. Are you  
30 suggesting that that would be entirely covered by a federal grant?

31  
32 Peggy Erickson,  
33 We don't know yet. I mean, we're hoping.

34  
35 Councilmember Floreen,  
36 Technically it would be eligible.

37  
38 Peggy Erickson,  
39 Oh yes.

40  
41 Councilmember Floreen,  
42 And you think there's money available.

43  
44 Peggy Erickson,





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1 We're hoping, yes.

2  
3 Councilmember Floreen,  
4 Okay. Thank you.

5  
6 Council President Praisner,  
7 I see no other lights. Thank you all very much. Good afternoon, ladies and gentlemen.  
8 This is a public hearing on, let's see which one am I on now?

9  
10 Unidentified  
11 14.

12  
13 Council President Praisner,  
14 14, okay. This is a public hearing on supplemental appropriation to the FY07 Operating  
15 Budget of the Office of Human Resources and Montgomery County Fire and Rescue  
16 Services for the Occupational Medical Services Program in the amount of \$823,120. A  
17 Management and Fiscal Policy Committee worksession is tentatively scheduled for April  
18 25th at 9 a.m. The record will close at the conclusion of the hearing. There are no  
19 speakers for this hearing. Good afternoon, ladies and gentlemen. This is a public  
20 hearing on a supplemental appropriation to the Board of Elections FY07 Operating  
21 Budget in the amount of \$1,046,640. A Management and Fiscal Policy Committee  
22 worksession is tentatively scheduled for April 25th at 9 a.m. and the record will close at  
23 the conclusion of the hearing. I see no speakers and no lights. I just want to make a  
24 comment that I have a visceral reaction to referring to the Board of Elections Operating  
25 Budget costs as cost overruns and no one else's budget as being a cost overrun since  
26 so many of the supplementals are cost overruns. So, let's get that word out of reference  
27 to the Board of Elections unless we're going to use it for every other department when  
28 we give them supplemental appropriations. Good afternoon ladies and gentlemen. This  
29 is a public hearing on a supplemental appropriation to the Department of Finance's  
30 FY07 Operating Budget for the Working Families Income Supplement Non-  
31 Departmental Account in the amount of \$1,079,080. The record will close at the  
32 conclusion of the hearing. There are no speakers for this hearing. This concludes, I  
33 believe, the Council's business for Tuesday. There are our Committee meetings which  
34 are obviously late but are being held. George, I don't know if you want to take five  
35 minutes or ten.

36  
37 Councilmember Leventhal,  
38 I don't, especially unless my colleagues, if --.

39  
40 Councilmember Trachtenberg  
41 Okay. No.

42  
43 Councilmember Leventhal,  
44 Ms. Trachtenberg and Mr. Berliner are prepared we can plunge right in.





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1  
2 Council President Praisner,  
3 Okay. The Planning, Housing and Economic Development Committee will begin at 2:45  
4 because it's going to take us that long to get elevators to get down to the third floor.  
5  
6 Councilmember Leventhal,  
7 Are we, do we have any technical requirements with respect to the television? Do we  
8 need a few minutes off for that? Do you know?  
9  
10 Unidentified  
11 I don't but I'll find out.  
12  
13 Unidentified  
14 I don't think so.  
15